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TO THE MEMORY OF ARCHBISHOP FILIPPO BERNARDINI *

> I have manifested thy name to the men whom thou hast given me out of the world. . . . While I was with them I kept them in thy Name. (John 17, 6, 12)

A FEW hours before He resigned His earthly mission on the gibbet that bridged earth and heaven, our Divine Saviour made this accounting to His Heavenly Father. The form and substance of this report, from that moment, demanded recognition as the pattern required of all pontiffs, indeed of all who share in the pontifical responsibility for souls.

Three weeks ago today, at the ceremony of my installation, I sought the prayers of the priests, the religious, and the laity of my Diocese that when my stewardship was done I would be able to acquit myself in accordance with these terms of Our Lord's accounting. The significance of these terms had challenged and stirred me in those days with a new and enlightening force. For I was resigning a post at the University and was thus keenly aware that what God had given me to do here was finished, with what merit only He could judge, though I hoped and hope for His merciful appraisal.

Beyond this, however, my preoccupation with stewardship was intensified by the news of the death of a beloved preceptor who once before had left me just as I was commencing a new phase of my mission. There it stood in the *Denver Register,* of September 5, placed next to the announcement of my Consecration. On the same day that my appointment was

* Eulogy at the Pontifical Requiem Mass for Archbishop Filippo Bernardini at the Catholic University of America, October 21, 1954, delivered by His Excellency, the Most Reverend Jerome D. Hannan, D.D., J.C.D., Bishop of Scranton.

announced, August 25th, Archbishop Filippo Bernardini passed to his eternal reward. I was one of the men whom God had given him; he could, as he reached my name in his accounting, call on the Vicar of Christ to testify that on the very day he laid down his pastoral staff, one of his men had been called upon to take up his.

But I knew that the list was long and that while his men who were appointed bishops would certify the faithfulness of his stewardship their voices would but share the chorus of endorsement that the multitudes would raise who owed to him their steadfastness in the faith. How easy it was for me, too, to envision the query, "Scis eum esse dignum?" addressed by the Merciful Master to the Archbishop's immediate Superior, Cardinal Fumasoni-Biondi, and to anticipate the ready nod of wholehearted assent which that venerable prelate would unhesitatingly give. For this was the prelate who twenty-one years before had consecrated him and who, as Apostolic Delegate to the United States, had known at close range his work in the School of Canon Law and at even closer range his able assistance in the very offices of the Delegation. Three other Cardinals stood equally ready, I could not doubt, to render equally prompt approval: one, his student, Cardinal McGuigan, of Toronto; and the two Cardinals Gasparri, one, his uncle, the other, his cousin, who had preceded him to the great *ad limina*. I was assured, too, of the consent of the present Most Reverend Apostolic Delegate, Archbishop Cicognani, who had, when both were students, established with him the strongest and most persevering of friendships, now on the very scene of the labors of the first half of his priesthood.

Indeed, it may not be presumptuous to remark the providential appropriateness of the post God permitted him to hold as the climax of a life devoted to keeping men in the Name of the Lord. Yes, throughout his life he had kept his roll book orderly and well. Did he not merit the honor, justified by this diligent experience, of aiding other men to keep theirs in order, too, and from the vantage point of Secretary of the Sacred Congregation for the Propagation of the Faith, to promote in

many lands the zeal for souls that in more limited areas he stimulated first as Apostolic Delegate to Australasia and then for nineteen years as Apostolic Delegate to Switzerland?

It was when, in the twenty-first year of his priesthood, his nineteenth year at the University, and his tenth year as Dean of the School of Canon Law which he had headed from its beginning, he was summoned to this broader forum that I had to part with him as my professor. Even as today I was then more concerned with my own sense of loss than with the general sentiment experienced by the University as a whole. I could have realized that this tireless, scholarly, genial, brilliant priest could not leave behind him a faculty and student body indifferent to his departure. Beyond the list of his men, the priest students of the School of Canon Law, his unaffected learning and solid piety had reached the hearts of the whole University family. Trying to retain what they could of the stimulating and inspiring personality, the Board of Trustees conferred on him the rank of Professor Emeritus of Canon Law. Not only the memory of his enviable record at the University has thus been preserved but an until now unbroken bond has made him a sharer of the University's triumphs as the University participated in the continuation abroad of the successes he had here achieved.

But now the bond is broken. Or is it? Must the Professor Emeritus who, from his native town of Pieve de Ussita some seventy years after his birth, set out to meet his Maker with his roll book up-to-date, yield the title which has preserved his influence in our midst? Must he cease to be our Professor Emeritus because we hope that he now will win this title from Him whose award will know no ending? Or can we not all by the vote of hearts, which God can so easily tally, prorogue the action of the past and make this lamented and beloved benefactor, through the Communion of Saints, the Professor whose spirit we shall jealously cherish, whose service we shall unceasingly esteem, and whose soul we shall perseveringly recommend to God? I feel that the vote has been cast and that God has blessed the mutually precious bond that you and I will treasure as a link with the riches of Eternity.

THE FULLNESS OF THE LAW IS LOVE *

I FEEL somewhat ill at ease in addressing the members of this distinguished body, learned in the science of the law with which I am familiar only in its practical applications. I have, however, the deepest respect for the ideals for which your society stands, and I am grateful, as is every other bishop, for the contribution which you are making to the functioning of the Church in the United States. No bishop could conscientiously exercise his legislative and judicial power unless he were surrounded by capable and loyal co-workers such as are represented in this group.

I know that you do not expect from me an address comparable to those which are delivered at your regular sessions. I do, however, have a few ideas of a general nature which I would like to express to you this morning and which I trust may have some relation to the principles which govern your deliberations.

I have often meditated, as I am sure all of you have, on the words in which St. Paul sums up the moral obligations so forcefully expounded in the twelfth chapter of his Epistle to the Romans: "*Plenitudo legis dilectio*", "the fullness of the law is love." I wonder if there is not a wealth of divine wisdom in these words which human jurisprudence, even within the Church, has only partially brought to light. I need not remind you of the dependence of human authority on God, a truth so regrettably lost sight of in civil courts and legislative chambers throughout the world. I wonder however if history would not show that it has been easy for ecclesiastical lawyers to adopt the attitudes of their secular confreres.

* Address delivered by His Excellency, the Most Reverend Richard J. Cushing, D.D., Archbishop of Boston, at a Pontifical Votive Mass honoring St. Pius X at St. Clement's Eucharistic Shrine on the second day of the eighteenth national convention of The Canon Law Society of America, held in Boston, October 12 and 13, 1954.—Text reprinted from *The Pilot*, Boston, Saturday, October 16, 1954, page nine.

To be sure, law is a marvelous integrating force in human society, contributing indispensably to the maintenance of the institutions which make civilized living possible.

Unfortunately, however, the law can be also a deadening influence, constraining vital human energy into the grooves of a decadent past, and perpetuating at the expense of a helpless multitude the questionable privileges of an exploiting minority.

Too often we find among civil lawyers a narrow and self-regarding point of view towards the rights which the law aims to protect and the decisions of legal history in which this protection has been afforded. Too seldom is there adequate distinction between rights which issue from natural law and which are thus inalienable and inviolable, and rights which have originated in the enactments of human legislators and which are thus subject to change and suppression at the hands of their successors in public office.

Failure to make this distinction has led to the curious inconsistency of introducing modifications arbitrarily into the laws of God, and presenting the laws of the state as immutable norms of human relationships.

Secularist Psychology

Adhering firmly as we do to the Christian philosophy of law, we protest against this unholy deification of human legislative power. Yet we must be ever on guard lest we introduce into our own juridical procedures something of the secularistic psychology of law which has developed within the legal profession of the present day, and which would translate St. Paul's " plenitudo legis dilectio " into what we might express as " plenitudo legis ipsa lex."

Let me develop this thought for a few moments, and point out to you what seem to me to be the principal obstacles in the way of informing our human ecclesiastical law with the spirit of supernatural charity. In the first place, let me call attention to what I may designate as undue worship of the purely human character of the law. We must never forget

that human legislation has no meaning or validity save as a participation in the legislative power of Almighty God.

Indeed, it would not be too much to say that God has endowed human beings with legislative authority only because in the weakness of fallen nature most men are unable to discover and apply the principles of God's law, which, in themselves, are sufficient to guide our lives towards eternal happiness. Human legislation is little more than divinely ordained compensation for the consequences of original sin. How arrogant are we, therefore, when we raise even the human legislation of the Church to the dignity of a self-sufficient and self-justifying standard of human conduct!

This is certainly not the spirit in which the Code of Canon Law was formulated. Over and over in the Code, if I read it aright, we find insistence on the divine foundation on which its every canon must rest. We cannot, therefore, if we are Christian as well as Catholic, present the law of the Church to our people as a merely human instrument for maintaining external order.

It would be quite conceivable that the Church, as an external society, could be perfectly disciplined and at the same time lack the inner vitality which makes it the body of the faithful on earth.

We have seen in our own day how externally imposed discipline can keep completely under restraint hundreds of thousands of people whose souls are seething in rebellion. Certainly we would not want the Church's law to strive narrowly and exclusively for the preservation of order.

Let us then remind ourselves, as often as we present the law of the Church to our people, that it comes ultimately from God and that its ultimate aim is to strengthen the love of God and to widen the area in which the peace of Christ will reign. And as we become conscious of the dignity and prestige which come to us as defenders of the Church's laws, let us never think of the Church as a merely human institution, and of ourselves as a privileged class within it.

Mandate of Charity

A second obstacle in the way of integrating the Church's legislation with the Divine Commandment of Charity is the all too prevalent tendency to forget the other fellow's reactions as we tell him what he must and must not do. Lawgivers are unfortunately not free from this tendency. It is easy for those who proclaim the law to others to disregard the honest difficulties which even the most carefully prepared laws create for those who observe them.

It should be for all of us a humbling and restraining thought that our deliberations and decrees affect a vast majority of the faithful who have implicit trust in our integrity. Most people, knowing little or nothing about legislative principles and procedures, are completely submissive to the authority of the Church, and well disposed towards all of us who exercise this authority or have an influence in preparing its enactments. They are deeply offended when the power of Christ is used in ways which Christ could not be thought of as approving, or when authority communicated by Christ is made manifest in circumstances in which Christ would be a stranger.

Human authority is so powerful, and human laws so serious in their consequences, that we should think over and over again of the reactions which even the most ordinary legislative and judicial procedures may evoke.

And let us be mindful of the human weakness of those who must obey the laws which we promulgate or interpret. Our Holy Father the Pope has manifested in our own day a truly Christ-like sympathy for those who must find their way to salvation amid the relentless fury of modern life. Throughout the "*Christus Dominus*" His Holiness has given expression to a paternal solicitude for his children in the Lord which every one of us should strive to approximate. We cannot be content with "throwing the book" at the faithful. True enough, as the theologians say, "*dura lex, sed lex.*" We cannot encourage a spirit of laxness or indifference towards legislation which has been reasonably enacted under the authority

of the Church. Nor should we lead people to think that laws are unwelcome restraints on freedom, to be avoided upon every pretext. We should present the law, however, on its brightest side, as a divinely appointed instrument for attaining to the higher freedom of the saints. And when we tell our people, as often we must, that the law must be obeyed in spite of the hardship which it naturally involves, we can and should employ the temperate and merciful language of Christ, rather than the harsh and unfeeling formulae of civil courts of justice. We should strive, moreover, to loosen within our hearts the cords of sympathy which the bitter and disillusioning experiences of juridical life tend to draw so tightly. The law is essentially human; it serves a human purpose in a human way. Let us not de-humanize it, by freezing it, under the cold beating of hardened hearts, into a set of abstract formulae, devoid of contact with human psychology.

Prestige of Authority

Finally, we must remove the greatest obstacle of all to the fulfillment of the law in charity: our human selfishness. The exercise of authority, and the prestige with which authority is surrounded can very easily cause selfish natures to forget that those who make the law need it no less than those who receive it. No one has power over his fellow human beings because of his personal superiority. Nor does competence in the field of jurisprudence imply personal independence of the restraints on human freedom which the law wisely enacts. Nothing can weaken the force of the law more than suspicion in those who are called to obey it that those who make it do not themselves take it seriously.

It is for this reason, without doubt, that theologians, while granting that a lawgiver is technically exempt from his own legislation, point out his obligation to observe even his own laws in order to give edification and to avoid scandal. If this is so, how much more urgent it is for us all to observe with scrupulous exactitude the laws which God has made, and those

which are imposed on us by the highest authorities in the Church!

We are in danger of developing a casual indifference towards the law first of all because, in the nature of things, we are ourselves not subject to so many of its precepts. Much of our time, for example, is devoted to legislation in matrimonial matters and the judicial procedures pertaining thereto. While these matters do not concern us personally, we must never forget that we are subject to the larger body of laws to which they belong, no less than are the good people who come to us for instruction and who receive our judicial decrees.

Again, we may become indifferent towards the law because of our knowledge of the many loopholes through which we can legitimately evade its restraints. Sometimes we find it necessary to caution others against an overscrupulous and unreasoning application of the law. We may find ourselves going too far in this direction when there is question of our own obligations. Do not be content to be devoted to the law on the level of pure scholarship; let it descend into the practical details of your daily lives.

Mere knowledge of Canon Law does not make a man righteous, just as mere knowledge of the principles of the spiritual life will not assure his progress in virtue.

Use your learning and scientific equipment not only for the benefit of the Church, but for your own sanctification. Try to follow out every precept of the law to its inevitable relation with God. Try to find in an intelligently exact observance of the law not merely the satisfaction of conformity to established norms, but the heavenly joy of fulfilling the will of God.

Plenitudo legis dilectio! To reach the perfection of charity through the law, we must begin with charity. We must work for God and the Church; we must not seek selfish gratification in the expending of our talent and our skill. It is because worldly people lack this supernatural point of view that they no longer regard laws as norms of conduct, but merely

as expressions of their own will. Unless we begin our study of the law in the fear and love of God, we too shall find ourselves attempting to make the law serve our own purposes instead of those of God and the Church.

Portal of Heaven

It has been a real pleasure to welcome your society to this Archdiocese, and to see in the exercises of this convention new evidence of your influence in the life of the Church. I pray that you may have continued success in your efforts to ennoble the science of the law and to promote universal respect for its canons and precepts. For, after all, order is heaven's own beauty. If we establish and maintain in the Church the order which centuries of legislative experience have decreed, the city of this world, so bleak and disillusioning for those who have no faith, will become for the faithful at least, the portal of the City of God.

THE TRUST AND THE *FUNDATIO*

IN any society it is necessary to find some means of caring for necessitous persons lest the "sturdy beggars," as England discovered in Elizabethan times, become a source of turmoil and terror for the populace.[1] Under certain circumstances and in certain types of society it is possible for this aid to be extended by other members of the family. Under other circumstances and in other types of society it becomes necessary to turn to some agency which is broader than the family and is able to care for the sort of burdens which the family cannot undertake.

In a kin-organized society the broader agency is the clan, the group of families within which is the family whose member is in need. In a politically organized society the broader agency is the state which, having replaced the older clan organization, is charged with the responsibilities formerly discharged by the kin-groups.

While the aid given by the clan and the state is on what may be called, in a sense, a "national" basis and is rendered necessary if only to avoid the upheavals which are liable to be caused in society by neglect of those in need, aid to the needy may be and is frequently given for another reason which entails a still broader, a supranational, outlook. Great impetus, certainly, was given to the idea of aiding the necessitous by the teachings of Jesus Christ on the need to practice the virtue of charity,[2] to assist one's neighbor, in the sense of anyone who was found to be in need.[3]

[1] Cf. G. M. Trevelyan, *England under the Stuarts,* 10 ed., pp. 23, 28-29, where he explains the terror they had once cast over village and farm, which produced the old nursery rhyme, "Hark, hark, the dogs do bark. The beggars are coming to town . . ."

[2] Cf. *Matt.* 25:34-46.

[3] Cf. *Luke* 10:25-37.

This teaching of Christ has been repeated at all times and in all places by the Church which He founded.[4] The teaching was emphasized further by the practice of the Church in founding schools, orphanages, hospitals and other institutions of charity[5] and in dividing its collections so that a fourth of its income was earmarked for assistance to the poor,[6] or setting up special funds into which were turned all the monies and property collected for the specific purpose of assisting those in need, where a three-way division of ecclesiastical income was practiced.[7]

When aid to the necessitous is in the hands of the family or the clan it is not too difficult to see to it that any funds set aside for such assistance are kept and used for that purpose. When, however, the funds are in the hands of a larger and differently organized society it becomes necessary to have certain rules of law which will insure that the funds will be distributed for the uses for which they were collected.

In the first place, the society will have to determine what uses will be approved, i.e. what needs are acceptable, within the framework of the society and in keeping with its goals, as those for which funds may properly be used. The Canon Law,

[4] Cf., among others, *Didache*, cc. 12-13, *Texte und Untersuchungen*, 2:48-53; St. Clement of Rome, *Ep. ad Corinthios*, cc. 5-6, 11-12, *T.u.U.* (new series) 5:98-99, 102-104; *Secunda Clementis*, cc. 8-16, F. X. Funk, *Opera patrum apostolicorum*, 2:153-165; Hermas, *Pastor*, Sim. 1, Funk, *op. cit.*, 2:439-443; *Ep. ad Diognetum*, c. 10, Funk, *op. cit.*, 2:327-329; St. Cyprian, *De opere et eleemosynis*, MPL 4:601 ff.; St. Gregory Nazianz., *Oratio 14*, MPG 35:858 ff.; St. John Chrysostom, περὶ ἐλεημοσύνης (oration), MPG 51:261 ff.; cf. also A. Puech, *S. Jean Chrysostome*, pp. 58-72; St. Ambrose, *De Officiis*, lib. II, MPL 16:103 ff.; St. Augustine, *Ep. 126, 10*, CSEL 44:7-18; id., *De opere monachorum*, cc. 29, 37, MPL 40:547 ff.; id., *Enchiridion*, c. 72 ff., MPL 40:231 ff.

[5] Cf. P. Allard, *S. Basile*, pp. 109-111, for such activities in the East; cf. also, regarding the activity of St. Ambrose in the West, St. Augustine, *Confessiones*, VI, 3, CSEL 33:116-118; Paulinus, *Vita Ambrosii*, c. 39, MPL 14:40-41.

[6] The Roman practice, cf. H. E. Feine, *Kirchliche Rechtsgeschichte*, p. 116.

[7] The general practice outside of Italy, cf. Feine, *op. cit.* p. 116, and E. Lesne, *Histoire de la propriété ecclesiastique en France*, III-2, 145-146, concerning the portion of the gift of Louis the Pious to the shrine of St. Martin of Tours which was to go to the poor.

the legal system of that society which is concerned with man's spiritual needs, thus approves the use of funds for Masses and for other ecclesiastical functions which have a direct bearing on all men's needs of the spirit.[8]

The Anglo-American legal system, which had previously approved such a use of funds, following the example of the Roman system,[9] for the Roman Catholic was the state Church under both systems at that time, eliminated them from coverage under Stat. 43 Eliz. c. 4 (1601). This statute, which was enacted after the Reformation in England, considered gifts for these Roman Catholic purposes to be gifts for a "superstitious use," one not officially accepted, though they were accepted for the Established Church.[10] In the United States, however, the doctrine of "superstitious use" has not been adopted and such uses of funds have been approved.[11]

The Canon Law also approves the use of charitable funds for erecting and maintaining hospitals, orphanges, and similar works of religion or charity, whether spiritual or temporal.[12] As a similarly general statement of the purposes approved in the Anglo-American system one might quote Gray, J., in *Jackson v. Phillips*,[13]

> "A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by

[8] Cf. Can. 1544, § 1; 826, § 3.

[9] Cf. Inglis v. Sailor's Snug Harbor, 3 Pet. (U.S.) 100, 139, 7 L.Ed. 617; Church of Jesus Christ v. U.S., 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 478. For the Roman provisions, cf. C 1.3.

[10] Cf. Lord McNaghten's words in [1891] A.C. 531.

[11] Cf. Appeal of Seibert, 18 Wkly Notes Cas. (Pa.) 276; Methodist Church v. Remington, 1 Watts (Pa.) 219, 26 Am. Dec. 61; Canovaro v. Brothers of Order of Hermits of St. Augustine, 326 Pa. 76, 191 A. 140; Morris v. Edwards, 227 N.Y. 141, 124 N.E. 724.

[12] Cf. Can. 1489, § 1; 1544, § 1; 685.

[13] 14 Allen (Mass.) 539, 556.

assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

Keeping in mind that its assistance to those in need of the spiritual aids which it is in a position to distribute has to be made through men, who must be supported so that they may devote their full time to this assistance, the Church, through its Canon Law, provides for the establishment and regulation of "benefices" as another use of its funds which is proper.[14] The Anglo-American system, too, has recognized this use of funds, at least in England, as is evidenced by the institutes of benefice and advowson.

To make certain that the funds will be applied to the uses which are acceptable and not otherwise, both systems of law provide for certain controls to be exercised. Thus, the Canon Law makes the local Ordinary executor of all pious wills, whether of decedents or of living donors, being vigilant that such wills be fulfilled, even by "visitation." Others who may be delegated as executors are required to account to them when they have performed their duties.[15]

In the Anglo-American system trusts are properly cognizable in Equity,[16] and that court will itself administer the trust or appoint a trustee to administer it,[17] for it is the agency of civil society to uphold trusts, recognize their validity, protect them, prevent misuse or abuse thereof, and enforce their execution.[18]

In view of this duty of the Ordinary to supervise the handling of charitable funds the Canon Law requires a cleric or a

[14] Cf. Can. 1409 ff. Can. 1473 prescribes that "superfluous" income from the benefice be distributed to the poor.

[15] Cf. Can. 1515, §§ 1, 2. Cf. also Can. 336, § 2; 1560, 4°; 1493; 296, § 1; 1362; 1493.

[16] Cf. Watkins v. Holman, 16 Pet. (U.S.) 25, 10 L.Ed. 873.

[17] Cf. Wells v. Comm'r of Int. Rev., 63 F2d 425; Kirwin v. Atty Gen. 225 Mass. 34, 175 N.E. 164.

[18] Cf. Kerner v. Thompson, 365 Ill. 149, 6 N.E. 2d 131.

religious person who has received, either by deed or by will, certain property which he is entrusted with applying to pious causes to inform the Ordinary of his trust. He must, further, indicate to him all the property which he has received, movable or immovable, together with the burdens annexed. If the donor has expressly and entirely forbidden such a report, the aforesaid cleric or religious person is forbidden to accept the trust. On being informed the Ordinary is bound to require that the trust property be safely invested and watch over the execution of the pious will. When the trust property is given to a religious person and the property is for the benefit of churches, inhabitants, or pious causes in the diocese, the Ordinary intended by the canon is the local Ordinary, otherwise it is the particular Ordinary of the religious person.[19]

In the Anglo-American system the trust will come to light when one attempts to make use of the instrument, deed or will, on which it rests, and it will then be controlled by Equity.

The local Ordinary, under the Canon Law, has likewise the power and the duty to " visit " hospitals, orphanges, and other similar institutions, even though they are chartered as corporations and no matter how they may be exempted. If they are not chartered as corporations and are entrusted to a religious house they are still completely subject to the jurisdiction of the local Ordinary, if it is a question of a religious house of diocesan jurisdiction.[20]

The Anglo-American system likewise provides for visitation of eleemosynary corporations.[21] In fact, this is one of the incidents of an eleemosynary corporation, and the right belongs to the donor or founder first of all.

With regard to the supervision of funds given to a corporation in the Church for pious purposes, the local Ordinary has

[19] Cf. Can. 1516; 1492, § 2; 2348; 533, § 1, 4°; 630, § 4.

[20] Cf. Can. 1491; 343, § 1.

[21] Cf. 1 Bla. Com. 480; Dartmouth College v. Woodward, 4 Wheat. (U.S.) 518, 4 L.Ed. 629, quoted in Guthrie v. Harkness, 199 U.S. 148, 157, 26 S.Ct. 4, 50 L.Ed. 130, 4 Ann. Cas. 433; Allen v. McKean, 1 Sumn. 276, Fed. Cas. No. 229.

the right to prescribe the minimum amount of the endowment and the proper distribution of the income.[22] He must, further, give consent in writing for a corporation to accept these pious foundations, and he is not to give this consent before he has found that the corporation is able to satisfy the new obligation which it is about to take on as well as the old ones which it has already accepted. He is especially required to make certain that the income will entirely take care of the annexed obligations according to the custom of each diocese.[23]

The Anglo-American system is more concerned with making certain that the trustee uses the charitable funds for the prescribed purposes as far as they will go. It is not faced with the type of undertaking, e.g. Masses, which has caused this rule to be adopted in the Canon Law system.

The money and movables assigned as the gift are to be deposited immediately in a safe place, which is to be designated by the Ordinary, in order that the money or the price obtained for the movables may be protected and as soon as possible carefully and profitably invested for the benefit of the foundation, with express and separate mention of the obligations involved. The investment of these funds is to be made according to the prudent judgment of the Ordinary, after he has heard the views both of the parties in interest and of the diocesan Council of Administration.[24]

The Anglo-American system likewise requires trustees to take proper steps to preserve the property [25] and to make it productive.[26] The trustee is governed in the making of his investments not only by the judgment of the Court of Equity as to what is safe but also by the requirements of the trust-deed or the will and any pertinent statutes in this behalf.[27]

[22] Cf. Can. 1545; 1520, § 3; 1550 (religious Ordinary).

[23] Cf. Can. 1546, § 1.

[24] Cf. Can. 1547.

[25] Cf. Restatement, Trusts, § 176.

[26] Cf. Restatement, Trusts, § 181.

[27] Cf. Brewster v. Demarest, 48 N.J.Eq. 559, 23 A. 271.

Foundations, even though made orally, are to be put in writing, according to the Canon Law. One copy of the document is to be kept safely in the archives of the Curia, and the other in the archives of the corporation to which the gift was made.[28] Oral trusts are likewise permitted at Common Law,[29] but statutes may require a memorandum [30] of an inter vivos trust.[31] If the trust is established by a will a writing is, of course, required.

Before undertaking the duties of their position, administrators of ecclesiastical property must: 1—swear that they will well and faithfully administer the property; 2—make an accurate and detailed inventory, which all subscribe, of the immovables, the movables of value and the other property, together with a description and an estimate of their value, or else accept an inventory previously made, with a notation of the things which in the meantime have been lost or have been acquired; 3—keep one copy of this inventory in the files of the administration and the other in the archives of the Curia and note in both any changes which may occur with regard to the property.[32]

In fulfilling their duties these administrators are bound to exercise the care and diligence of a good father of a family (*paterfamilias*), i.e. of one who is minded to handle the property for the benefit not only of himself but also of others for whom he feels bound to provide.[33] The trustee, under the Anglo-American system is bound to use such care as an ordinary prudent man would take if he were making an investment for himself [34] or, as Lindley, L. J., said in *Whitely v. Learoyd*,[35] ". . . if he were minded to make an investment

[28] Cf. Can. 1548.

[29] Cf. Restatement, Trusts, § 39.

[30] Cf. Restatement, Trusts, § 40.

[31] Cf. Restatement, Trusts, § 24.

[32] Cf. Can. 1522; 1476, § 1; 1296, § 2; 485.

[33] Cf. Can. 1523; 2147, § 2, 5°.

[34] Cf. Restatement, Trusts, § 174.

[35] 32 Ch. Div. 355.

for the benefit of other people for whom he felt morally bound to provide."

The Canon Law elaborates this standard thus: 1—they must be vigilant lest the property entrusted to their care be in any way lost or damaged; 2—they must observe the rules both of civil and of Canon Law or those which have been imposed by the founder or donor or lawful authority; 3—they must demand the income and profits accurately and at the proper time and keep those which have accrued safe and use them according to the intention of the founder or established laws and norms; 4—they must invest the money of the Church which is left after paying expenses, and which can be profitably invested, with the consent of the Ordinary, for the benefit of that same Church; 5—they must keep proper books of receipts and expenditures; 6—they must keep in proper order the documents and instruments on which the rights of the Church to the property rest, and protect them in the archives of the Church or in a suitable and proper safe, and deposit an authentic copy thereof, when this can conveniently be done, in the archives or safe of the Curia.[36]

The trustee, under the Anglo-American system, is bound to carry out the terms of the trust, keep and render accurate and clear accounts, preserve the property, enforce all claims due it, keep the funds separate from his own, and make the property productive by making safe and profitable investments.[37]

The Canon Law further provides that unless administrators have previously obtained permission in writing from the local Ordinary they perform invalidly acts which go beyond the limits and methods of ordinary administration.[38] A trustee is likewise not permitted to make contracts inconsistent with the terms of the trust.[39]

[36] Cf. Can. 1523; 2347, 2°; 1531, § 3.

[37] Cf. Restatement, Trusts, §§ 164, 172, 176, 177, 179, 181. Cf. also Atty Gen. v. Bedard, 218 Mass. 378, 105 N.E. 993.

[38] Cf. Can. 1527, § 1; 1529, § 2.

[39] Cf. Trustees of Andover Theological Seminary v. Visitors of Theological Inst. in Phillips Academy in Andover, 253 Mass. 256, 148 N.E. 900.

When contracts have been entered by administrators without the permission of the competent Superior the Canon Law provides that the Church is not bound to answer for the contract unless and insofar as there has been profit to the Church.[40] Such recovery would also be allowed in the Anglo-American system under one or more of the counts in Quasi-Contract.

The Canon Law also provides that administrators who, even though they are not bound to carry out the administration of Church property by reason of a benefice or an ecclesiastical office, on their own motion withdraw from duties which they have expressly or tacitly undertaken, with the result that damage results therefrom to the Church, are bound to restitution.[41] Under the Anglo-American system the trustee must apply to the court for a discharge and make a full accounting at that time.[42]

From the foregoing it is apparent that there are many similarities between the ways the two systems handle the problem of how to insure that provisions made for the necessitous will actually be carried out. Yet, there remains an interesting difference in approach. Both systems envision the possibility that an individual, or a number of individuals, or a corporation will hold the property, the trust-res, and use it for the benefit of those in need. In addition, the Canon Law envisions a situation in which the property itself will be treated as a legal entity, a corporation, the agent of which will be known as an "administrator."[43] This degree of abstraction the Anglo-American system does not reach.

That it does not reach this degree of abstraction some might explain on the basis of an aversion of the Anglo-Saxon mind to the speculation loved by the Continental, rather than on

[40] Cf. Can. 1527, § 2.

[41] Cf. Can. 1528.

[42] Cf. Bible Readers Aid Soc. of Trenton v. Katzenbach, 97 N.J. Eq. 416, 128 A. 628.

[43] Cf. Can. 1489; 1499.

the basis of historical accident. Yet, certainly Glanville [44] and Bracton [45] were not unfamiliar with Continental legal thinking. Further, Christopher St. Germain [46] shows himself quite familiar with speculation on the more abstract concepts of law.

Students of law in the Continental Universities were already familiar with the abstractions which had been made by the Roman jurists in the matter of legal personality. English lawyers studying in the Inns of Court, rather than at the Universities, may have been more tied down in their thinking to the concreteness of procedural applications of legal concepts, but it is precisely at this point that the abstraction in question becomes important, so they can hardly have overlooked it, except for some other reason.

The Romans had already adverted to the fact that it was possible that the same person might appear before the court now as plaintiff, now as defendant. The natural, physical, person, therefore, had, over and above his natural, physical, personality a further one cognizable at law. In fact, given the system of subjection of the *filii familias* and the slaves to the *pater familias,* some men who had natural, physical, personality might not have legal personality.

Once it was understood that the same natural, physical, person could appear behind either of two masks (*persona*), that of plaintiff or defendant, it was not so difficult to see that groups of persons who were in some wise associated might have rights to be enforced or duties to be performed. Thus, these groups, too, could appear behind the mask of plaintiff or defendant. In fact, it was not necessary that the men in the group be always the same ones, for the group could retain its identity, e.g. a *municipium,* even if the members thereof changed. In other words, the aggregation appeared not so

[44] *Tractatus de Legibus et Consuetudinibus Angliae* (ca. 1187), cf. *Readings in the History and System of the Common Law* (3 ed. 1927) for an English translation.

[45] *De Legibus et Consuetudinibus Angliae* (ca. 1256), cf. *op. cit. supra.*

[46] Doctor and Student (ca. 1518) (ed. Muchall, 1874). Compare his chapters 1, 2, 4, 5 with St. Thomas Aquinas, *Summa Theologica,* I-II, qq. 93, 94, 95.

much as a group of distinct individuals but rather as a body, a *corpus*.

Thus far the Anglo-American system, too, has gone, seeing artificial persons as well as natural persons in society, whether it so considers them by a " fiction " or not. Of course, at times, it may find it necessary to " pierce the veil " and look at the individuals behind the mask when they are attempting to achieve something which the law does not permit, even as it does not permit certain associations, considered harmful to society, to exist at all (*collegia illicita*).

A further degree of abstraction was attained by the Roman jurists who were faced with the operations of the *fiscus* [47] which in many cases appeared as a subject of rights or as having duties. When this fund appeared before the courts, represented by a fiscal advocate, the previous ideas began to be applied thereto. The idea thus came to be accepted that a fund itself could be considered a person, not natural but artificial, or " moral," as the Canon lawyers tended to call it.

That the Anglo-American system did not so readily accept this abstraction, logical though it be, but preferred to see some physical person or aggregate of physical persons, whether acting as joint tenants, partners, voluntary association, or corporation, in the position of plaintiff or defendant was probably due rather to the historical fact that the feudal system was still coloring men's thinking when the Chancellor began to enforce conveyances to uses.

The feudal mind was such that it had to see a physical owner or an aggregate of physical owners of property who would accept livery of seizin and perform the feudal services. Even when it saw the abbot and monks of a certain monastery as a continuing group, a *persona ficta,* it saw the successive abbots, for a long time, " invested " with the fief. Further, it saw the lands going in frankalmoigne exempted from temporal services. Indeed, to put a stop to this Statutes of Mortmain

[47] Cf., e.g. C 10.15. Consider also the *hereditas iacens,* e.g. D 36.4.5.20, 37.3.1.

began to be enacted in the time of Edward I (1272–1307) in England.

At about this time, too, in the reign of Pope John XXII (1316–1334), the great controversy on poverty clarified still further the distinction between ownership and use. Going a step farther than the Roman distinction between *dominium* and *usus* which left the one having the *usus* still having something, the friars introduced the idea of a gift *ad opus fratrum,* for their works, as distinct from their persons. If, by wearing, eating, or dwelling in, things which were given to promote their works the friars consumed these things they still avoided having a technical *usus,* by a very fine distinction.

Lay owners of property who were tired of the feudal burdens of reliefs, wardships, marriages, escheats, etc., and who found themselves unable to make wills of land prior to the Statute of Wills (1540) were quick to see the advantages of a conveyance *ad opus,* in this case *suum,* rather than *fratrum.* Since the legal ownership was in the hands of from three to ten men, not all of whom were likely to die or be guilty of treason at the same time, and since title remained among them by the rule of survivorship and others could be taken in as joint tenants when one or more died or were removed, the feudal burdens were avoided. Further, the foeffor who conveyed *ad opus suum* could ask the foeffees to convey the lands in their turn to persons designated by him and thus, in effect, will the lands to whom he pleased, escaping the rules of descent.[48]

There were no Common Law writs to compel the foeffees to uses, *fratrum* or *suum,* to do as the foeffer asked, consequently there was no danger that the feudal burdens known to the Common Law would be imposed upon lands so conveyed. Only in the forum of conscience, at first of the Church, later of the king, i.e. in the court of the "keeper of the king's conscience," the Chancellor, could the obligation be imposed.[49]

[48] Cf. Can. 1513, § 2 for something similar.

[49] Cf. F. W. Maitland, *Equity* (2 ed. 1936) pp. 23-28.

It would seem, therefore, that this system of conveyances, which has developed into the modern "trust," has taken precedence over the more abstract, especially when the fund itself is treated as a corporation, concept of the *fundatio* in the Anglo-American system because both ecclesiastic and lay barons found it to their advantage to develop this system of conveyances to uses, the ones to escape the strictures of the Statutes of Mortmain, the others to avoid the burdensome incidents of feudal tenures and to gain the possibility of making what was, in effect, a will.

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THE NATURAL LAW, THE MARRIAGE BOND AND DIVORCE *

DR. ROMMEN has brilliantly laid the foundation for the discussion of the subject of the natural law and the family by describing the relation of that law to man in society. It is my privilege to continue this discussion by considering the conception of the family under the natural law in regard to the marriage bond and divorce. I am very grateful for the opportunity afforded me by the Guild of Catholic Lawyers of New York to participate, in this, their Second Annual Conference on the Natural Law. I congratulate those responsible for this Conference and commend them for their dynamic leadership and broad vision.

I

The Natural Law Dictates Monogamy

Natural law is that objective, eternal and immutable hierarchy of moral values, which are sources of obligation with regard to man because they have been so ordained by the Creator of nature. This Law conforms to the essence of human nature which He has created. It is that aspect of the eternal law which directs the actions of men.[1] Although this

* The writer takes this opportunity to express his indebtedness for assistance received from Right Reverend Monsignor Robert E. McCormick, J.C.D., former Officialis, Archdiocese of New York, Metropolitan Tribunal, Very Reverend Francis J. Connell, C.Ss.R., S.T.D., LL.D., Dean, School of Sacred Theology, The Catholic University of America, and Very Reverend Charles E. Sheedy, C.S.C., LL.B., S.T.D., Dean, College of Arts and Letters, University of Notre Dame. He also appreciates the aid which he received from Reverend Louis J. Hiegel, S.J., J.C.D., Lecturer on Canon Law, School of Law, Loyola University of the South, New Orleans, Louisiana. [Paper presented by Brendan F. Brown, LL.M., J.U.D., D.Phil. (Oxon) at New York City, December 4, 1954.—Editor's note.]

[1] Aquinas, St. Thomas, *Summa Theologica,* Treatise on Law, Q. Q. 90-97 inclusive, *Review* by Brown, Brendan F. (1952) 1 De Paul Law Review 312-318.

law is divine in the sense that it does not depend on human will, nevertheless, it is distinguishable from divine positive law, which has been communicated directly from God to man through revelation, for natural law is discoverable by reason alone.[2] Natural law has been promulgated in the intellect. At least as regards its more fundamental principles it is knowable proximately through the conscience.[3]

The most basic ideal of this law, namely, that every man must live in accordance with his rational nature, so that he will do good and avoid evil, is self-evident to all. No reasoning is required to reach a knowledge of this ideal.[4] But other parts of the natural law are not perceivable with an equal degree of facility. Varying gradations and types of reasoning are necessary to ascertain the sub-norms of that law.[5] Some of these are discoverable by an immediately derived deduction, which is almost obvious, such as the requirement of *some* form of marriage or contractual agreement before a man and a woman can lawfully have sexual relations. But other sub-norms are ascertainable only after observation, study, and experience, both individual and sociological. Examples are the secondary goal of marriage, and the precise means for the just and adequate effectuation of the primary and secondary purposes of marriage.[6]

The necessity of some kind of marriage, either polygamous or monogamous, dissoluble or indissoluble, is obviously deducible from the basic ideal of the natural law, since without propagation and the rearing of children the human race would

[2] *Ibidem.*

[3] Sheedy, Very Rev. Charles E., C.S.C., *Letter*, October 10, 1954, to Brendan F. Brown.

[4] Connell, Very Rev. Francis J., C.SS.R., *Outlines of Moral Theology* (1953) 30.

[5] Sheedy, Very Rev., Charles E., *Materials for Legal Ethics* (1950) edited notes of Right Reverend Monsignor William J. Doheny, C.S.C., J.U.D., judge of the Roman Rota, 10.

[6] Joyce, Rev. George Hayward, S.J., M.A. (Oxon.), *Christian Marriage* (1948) 6-8.

become extinct.[7] This ideal demands some form of abiding union between man and woman, even if it be only for a limited period. All men realize that there must be some fixed, definite, and settled arrangement, which will enable man and woman not only to procreate, but also to protect the offspring until they are capable of looking after themselves. It is self-evident that marriage differs from the mating of animals, to the extent that will and reason are distinguishable from blind instinct.[8] No demonstration is needed to show that marriage must uphold the unique dignity of human personality.

The study of cultural anthropology reveals the historical fact that practically all peoples have attached an inherently sacred and religious character to marriage, which they have expressed by special and symbolic rites of a public and solemn kind. These rites became part of their traditions, customs, and laws, which recognized that marriage is not of human, but of divine, origin, in which man does not create life, but only cooperates with Divinity in its transmission.[9]

[7] See Petrovits, Rev. Joseph J. C., *The New Church Law on Matrimony* (1921). On page 1, he writes: "*Marriage in General.* The word matrimony is a compound derived from the two Latin words, namely, *matris munium* meaning the *office of the mother.* The burdens inherent in gestation, the pain accompanying parturition and the numerous anxieties subsequent to child birth, being indicative of the most intimate relationship between mother and child, are generally adduced as the reason why the word mother in preference to the word father has been embodied in the name of this sacrament."

[8] Pope Pius XI, Encyclical Letter, *Christian Marriage* (*Casti Connubii*), December 31, 1930, Translation published by the National Catholic Welfare Conference, Washington, D. C. (1931), 5. This Encyclical elaborates and emphasizes certain points in the Encyclical *Arcanum* of Pope Leo XIII, published fifty years previously, namely, on February 10, 1880. The chief purpose of *Casti Connubii* was to reaffirm the basic thought of *Arcanum* in the light of conditions which adversely affected the society of the family at the beginning of the thirties. See also Pope Pius XII, *Address to the Italian Catholic Union of Midwives*, October 29, 1951, Translation included in *Moral Questions affecting Married Life*, Discussion Outline by Rev. Edgar Schmiedeler, O.S.B., Ph.D., Director, N.C.W.C. Family Life Bureau, National Catholic Welfare Conference, 18 parag. 49.

[9] Pope Pius XI, Encyclical Letter, *Christian Marriage*, *op. cit. supra* note 8 at p. 28; Ayrinhac, Very Rev. Henry A., S.S., D.D., D.C.L., *Marriage Legis-*

Man is obliged in his choice of institutions to select only those which are in agreement with the natural law. This is particularly true of marriage since it is one of the most important, affecting, as it does, the spiritual and temporal welfare of the whole human race by determining the status of the family which is the foundation of society.[10] According to the natural law, there is an obligation to adopt that form of marriage which will best achieve not only the almost self-evident objective of satisfying the urge toward propagation, and care for the physical needs of children, and their moral and educational training, but also the secondary purpose, namely, the mutual assistance of the spouses, physical, mental and spiritual, and the allaying of concupiscence.[11]

But the *precise* form of marriage which is commanded by the natural law is not immediately apparent and known to all, for it does not pertain directly to the primary inclination of that law. The prescribed type of marriage is not a primarily derived deduction from the basic ideal of the natural law, as are the prescriptions of the Decalogue, for example.[12]

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lation in the New Code of Canon Law (revised and enlarged by Rev. P. J. Lydon, D.D.) (1952) 234; and Bouscaren, Rev. Timothy Lincoln, S.J., LL.B., S.T.D. and Ellis, Rev. Adam C., S.J., M.A., J.C.D., *Canon Law, A Text and Commentary* (2nd ed. 1953) 453, 454.

[10] Pope Pius XI, Encyclical Letter, *Christian Marriage, op. cit. supra* note 8 at p. 3, and Pope Pius XII, *Address to the National Congress of the "Family Front" and the Association of Large Families*, November 26, 1951, Translation included in *Moral Questions affecting Married Life, supra* note 8 at p. 24, parag. 1.

[11] Pope Pius XI, Encyclical Letter, *Christian Marriage, op. cit. supra* note 8 at p. 21; Canon 1013 parag. 1 of the Code of Canon Law.

[12] It should be noted that there is another nomenclature to express the varying gradations of the natural law. Thus sometimes the basic or most universal principle is called the primary precept, while an immediate deduction is referred to as a secondary precept rather than as a primary deduction. According to this nomenclature, a more remote conclusion would be called a tertiary precept of the natural law rather than a secondary conclusion. See Connell, Very Rev. Francis J., C.Ss.R., *Outlines of Moral Theology* (1953) 29, 30; Sheedy, Very Rev. Charles E., C.S.C., *The Christian Virtues* (1951) 33-35, and *Letter*, October 10, 1954, to Brendan F. Brown.

This explains why there is more agreement that murder is against the natural law than there is that divorce is morally wrong.

The characteristics of unity and indissolubility in regard to marriage are secondary conclusions from the natural law, like the right of a worker to a living wage. They are not readily obvious because they relate to the secondary end of marriage, and to ways and means for best reaching the primary and secondary goals.[13] Reasoning and study are required to distinguish between perfect and imperfect means, and to recognize the secondary objective of marriage, but not in regard to the abnegation of means altogether. Lifelong monogamy is morally necessary for the attainment of man's ethical life, and the aims and functions of marriage.[14] This becomes clearer when it is contrasted with the only other type of marital relationship, namely, polygamy.

It is manifest that polyandry, (i.e.) that type of polygamy found in history in which one woman has two or more husbands at the same time, is the worst possible matrimonial arrangement, for if it does not entirely suppress the primary end

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The marriage bond is the *formal* cause of marriage; man and woman, the *material* cause; the wills of the parties, the *proximate efficient* cause, the natural appetites, the *remote efficient cause*; and the procreation and education of children and the natural aid of spouses are the *final* cause: See Ryan, Rev. Louis A., O.P., *Philosophy of Marriage and the Family*, in *Marriage and Family Relationships* (edited by Dr. Alphonse H. Clemens) (1950) 42 at pp. 49-54.

[13] Pope Pius XI, Encyclical Letter *Christian Marriage, op. cit. supra* note 8 at pp. 36, 37; Canon 1013, parag. 2.

[14] Davis, Rev. Henry, S.J., 4 *Moral and Pastoral Theology* (1936) 49: "Marriage is the lawful contract between man and woman by which is given and accepted the exclusive and perpetual right to those mutual bodily functions which are naturally apt to generate offspring." Ryan, Rev. Louis A., O.P., *Philosophy of Marriage and the Family* in *Marriage and Family Relationships, op. cit. supra*, note 12 at p. 54: "The matrimonial bond is indissoluble because it is ordained to a function which is not arbitrary or temporary, but durable and permanent." Vermeersch, Rev. A., S.J., *A Catechism arrange according to the Encyclical "Casti Connubii" of Pope Pius XI* (trans. by Timothy Lincoln Bouscaren, S.J.), under title *What is Marriage* (1950) 7 and following. See Canon 1110.

of marriage, at best it places obstacles to its realization.[15] Polyandry contravenes the most important purpose of marriage, for it curtails generation, casts doubt on paternity, and interferes with the proper upbringing of children. It is not necessary to have recourse to the rational faculty of deduction and induction, to any considerable extent, to know that polyandry, like murder, may never be reconciled with any part of the natural law under any circumstances.[16]

Neither polygyny, (i.e.) that form of polygamy, where one man has more than one wife at the same time, nor successive polygamy, which results from the exercise of the right of remarriage after divorce, when the former spouse, either husband or wife, is still alive, entirely suppresses or prevents the attainment of the primary end. But neither perfectly achieves the primary goal, and both are directly opposed to the secondary.[17] Both attain the secondary goal better than polyandry,[18] and, strictly speaking, may be reconciled with the essential demands of nature, in those exceptional situations which are sanctioned by supernatural law.[19] But only indestructible monogamy will adequately make possible the complete fulfillment of all the duties which have been imposed on husband and wife by the natural law. Hence, marriage under the natural law may be defined as a lawful, exclusive, and lifelong contract between a man and a woman by which is mutually given and accepted a right to those physical functions for the performance of acts which are mutually apt for the generation of children, resulting in a status primarily intended for the care and education of children, and secondarily

[15] *Individual Ethics and Social Ethics*, a Digest of Lectures for Students of Fordham University, 59, 60.

[16] Bouscaren, Rev. Timothy Lincoln, S.J., and Ellis, Rev. Adam C., S.J., *op. cit. supra* note 9 at p. 457.

[17] *Individual Ethics and Social Ethics*, a Digest of Lectures for Students of Fordham University, 60, 61.

[18] Joyce, *op. cit. supra* note 6 at pp. 18-21.

[19] *Idem*, pp. 26-31.

for the mutual help of the spouses and the allaying of concupiscence.

II

It is Paradoxical to Reject One Kind of Polygamy and to Adopt Another

Today in this country, there is no problem of simultaneous polygamy. The peoples of the Western World of Christendom have always rejected the institution of simultaneous polygamy, both temporary and permanent, whether it assumed the form of polyandry or polygyny. Indeed all civilized peoples have repudiated the practice of polyandry and only a few have sanctioned polygyny. But it is paradoxical for those nations which refuse to accept *simultaneous* polygamy to legalize *successive* polygamy, in the way of easy divorce with the right of remarriage. The same reasons which prompt the rejection of the former, even though it is for the life of the spouses, are applicable to the latter.

Why do the American people reject the doctrine of *simultaneous* polygamy? It is because they are aware that the natural law requirement of a maximum contribution on the part of the parent is diluted, that unreasonable and unnecessary opportunity is afforded for generative activity, so that the physical aspect of marriage tends to obscure the rational, and that even if a plural marriage was indissoluble, there never could be that complete surrender and cooperation of the spouses which are required for the adequate fulfillment of the primary and secondary purposes of marriage.[20] The total needs of the spouses are never fully satisfied.[21]

But most of these reasons apply with equal vigor in essence to a system of divorce, which results in *successive* polygamy. There is the same lack of mutual aid and concentration of ef-

[20] Bouscaren and Ellis, *op. cit. supra* note 9 at pp. 456, 457. See *The Christian Family*, Statement of the Bishops of the United States, 1949, published by the National Catholic Welfare Conference, Washington, D. C.

[21] Joyce, *op. cit. supra* note 6 at pp. 19, 20.

fort on the part of the parents though on a different level with consequential harm to the children.[22] There is a similar inability of the parents to fulfill the duties which they have undertaken toward their offspring and themselves. There is an analogous deficiency in the matter of conjugal faith, honor, and love, accompanied by inherent jealousies and discords engendered by the always present possibility of divorce which is greatly increased if the right of remarriage is available,[23] for a person will not be inclined to continue cohabitation in case of a somewhat unhappy marriage, if the choice is between that marriage and a new marriage, rather than between that marriage and no marriage. Indeed permanent plural marriage might have certain advantages over the present sys- of dissoluble monogamy for at best it would insure the continuing united efforts of the natural parents in favor of the child in a stable marital arrangement. The indissolubility of marriage is at least as important as its unity.

By allowing divorce with remarriage, monogamy is destroyed in principle, as well as in practice. Attempts to preserve the ideal of monogamy, which has become part of the tradition of civilized man, become fictional once an exception is made in favor of divorce for any reason on the natural level. An unbreakable marriage bond is an indispensable condition for true monogamy which has for its purpose the subordination of man's lower nature to the demands of his rational self.[24] If an exception is made, his rational nature will be constantly urged to find some justification to bring the marriage in question within the exception, and if this is not possible to induce the legislator to allow more and more ex-

[22] Bouscaren and Ellis, *op. cit. supra* note 9 at p. 457.

[23] Pope Pius XI, Encylical Letter, *Christian Marriage, op. cit. supra* note 8 at pp. 9, 14.

[24] *Idem* at p. 36. See Lachance, Rev. Louis, O.P., *Peace and the Family*, 9 *The Thomist*, no. 2, 138-139, (April, 1946) cited by Rev. Louis A. Ryan, O.P., in *Philosophy of Marriage and the Family* in *Marriage and Family Relationships, op. cit. supra* note 12 at p. 52. See Sheedy, *op. cit. supra* note 5 at p. 11.

ceptions. One ground of divorce begets others under the powerful urge of two great forces,[25] namely, the example of others in indulging their inordinate desire for pleasure and the satisfaction of sex, which perhaps creates the greatest emotional drive next to self-survival itself.

All attempted justifications of divorce, as distinguished from separation, relate to the secondary object of marriage, never to the primary. They exalt the quest of the spouses for happiness, or the avoiding of hardship, at the expense of the welfare of the children. But according to the natural law, the essence of true monogamy is derived from the social interest in the stability of the family, which must always and necessarily outweigh the social interest in the personal improvement, desires and claims of husband and wife. Monogamy loses its true character and significance unless the individual interest of the spouse is completely subordinated to the primary end, and benefit of mankind. Actually the perfection of the spouses in the family is impossible unless they pursue the essential ends of marriage as recognized from the direction of the marital act toward procreation and the resulting duties to children. Perfection can not come from acting contrary to one's nature and the directives of the natural law.[26]

[25] Pope Pius XI Encyclical Letter, *Christian Marriage*, *op. cit. supra* note 8 at p. 33.

[26] Pope Pius XII, *Address to the Italian Catholic Union of Midwives*, *op. cit. supra* note 8 at p. 18, parag. 47. See Ryan, *op. cit. supra* note 12 at pp. 51, 52: "In appraising this problem of the ends or purposes of marriage, it is necessary, first of all, to distinguish between an objective and a subjective purpose. An objective purpose is that to which something is directed by the very nature or its form (*finis operis*). A subjective purpose is the personal motive, the intention of the agent (*finis operantis*). As far as subjective purposes in marriage are concerned, they may be multiple, such as economic security, good name, friendship between nations, sharing intellectual labors, love satisfaction, etc. In the matter of objective purposes (and it is these with which we are concerned here), they must be judged by the very nature of the marital act, not by some extrinsic motivation, however grand and noble it may be". See *Idem* at pp. 42-54, for a scholastic critique of the "adjustment" theory of marriage as advocated by Prof. Henry A. Bowman, Prof. Joseph Kirk Folsom, and Prof. Willard Waller, of the "com-

That monogamy works personal hardships in particular cases is no valid reason for rejecting it.[27] Every beneficial law necessitates sacrifices on the part of some individuals. Numerous examples may here be cited, such as the laws providing for compulsory military service, the quarantining of persons afflicted with highly contagious diseases, and the imposition of taxes.[28]

True monogamy does not exclude the possibility of separation, in certain exceptional situations, but only the right of remarriage. This right destroys monogamy and substitutes successive polygamy. Separation does not impair the marriage bond, which is manifestly not physical, but merely the fact of cohabitation. This is not identical with the bond, but simply the natural and usual result of it. Although cohabitation is required for the attainment of the primary and secondary aims of marriage, separation is allowable, indeed it may become imperative, if continued cohabitation in a particular marriage should become a cause or occasion of the frustration of these ends.[29] Separation will eliminate those evils which advocates of divorce advance as justification for the breaking of the marriage bond.[30] It is certain that dis-

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panionship" theory as favored by Dr. Ernest W. Burgess and Locke, and of the "perfection" theory which endeavors to bridge the gap between the "companionship" and "procreation-education" theories, as explained by A. L. Ostheimer.

[27] Scott, Rev. Martin J., S.J., *Divorce is a Disease which destroys Marriage* (1942) 10-12.

[28] *Idem* 14. The individual who assists in the creation of the sociey of the family by marriage exists for the maintenance of the marriage bond, analogous to a citizen who exists for the stability of the State, or politically organized society, when it is threatened, for example, by unjust war. But in each case, this is so because in sacrificing himself for the marriage bond, or for the State, the individual preserves that which is required for his own private good in ultimate analysis.

[29] Canon 1128.

[30] Pope Pius XI, Encyclical Letter, *Christian Marriage*, *op. cit. supra* note 8 at p. 32.

solution of this bond is not necessary for the removal of such evils. Under the natural law, however, the right of separation is only temporary, lasting only as long as the conditions which originally justified it.[31]

A large majority of the American people have accepted values concerning the marriage bond, which do not conform to those of the natural law. Their sincerity in holding these opinions, however, may be respected. They may be invincibly ignorant in this respect, and hence morally blameless in seeking divorces and remarrying.[32] This may be explained by the fact that the obligation to accept the ideal of true monogamy and to conform to it in practice is a conclusion remotely derived from the natural law, and not an obvious and proximate deduction therefrom.[33] But so likewise is the obligation to refrain from simultaneous polygamy, which has always been well perceived. The intricate task of explaining the historical, psychological and ethical reasons for this paradox would indeed be challenging.

The grave sociological evil of divorce may be observed in the growing number of delinquent children in this country, who are the victims of broken homes.[34] Neither the school nor any other public agency can adequately replace the parents in the formation of the character of the child. When the parents fail in the performance of duties arising from the natural law, the child becomes the waif of society.

[31] Connell, Very Rev. Francis J., C.Ss.R., *Letter*, November 22, 1954, to Brendan F. Brown.

[32] Joyce, *op. cit. supra* note 6 at pp. 6-8.

[33] *Ibidem.*

[34] *The Christian in Action*, Statement of the Bishops of the United States, 1948, published by the National Catholic Welfare Conference, Washington, D. C.; Clemens, Alphonse H., *The Crisis in Family Life* in *Marriage and Family Relationships* (1950), 1 at p. 3; Gellhorn, Walter, assisted by Jacob D. Hyman and Sidney H. Asch, *Children and Families in the Courts of New York City* (1954) 273: thus more than 300,000 children under the age of 21 years were involved in the more than 400,000 divorces in 1948.

III

There is a Supernatural Law of Marriage

Of course, reason applied to the natural law has its limitations in making known the complete will of the Author of nature to man in regard to the permanence of the bond of marriage. Thus by the light of reason alone, man could never have discerned that Christian marriage (i.e.) the marriage of two baptized persons, is a sacrament, that marriage was restored by Christ to its original condition of divorceless monogamy, and that all of its spiritual discipline was entrusted to His spouse, the Church.[35] Natural law could never lead man to the knowledge that God has never granted and will not grant a dispensation for the breaking of the bond, under any circumstances, where it has resulted from sacramental marriage between two baptized persons after physical consummation.[36] Natural law is silent as to whether its Author provided for a dispensation by a supernatural law so as to dissolve the natural bond, in exceptional situations, both past and present, or even the sacramental bond of a non-consummated marriage.

But once man by faith and grace comprehends the truth that God is the Author of a supernatural, as well as a natural, law, he perceives that there is nothing unreasonable and even impossible in God's making the bond of natural marriage dissoluble, if supernatural objectives so necessitate. It would be unreasonable for God to dispense, for example, from the duty to refrain from blasphemy, because that duty springs from that part of the natural law which directly relates to the final end of man's moral life.[37] But the unity and indissolubility of marriage do not have a direct bearing on this end. They rather relate to morally necessary means towards that end. Hence there is nothing unreasonable in the dispensation from

[35] Joyce, *op. cit. supra* note 6 at pp. 147-152; Ayrinhac, *op. cit. supra* note 9 at pp. 1-4.

[36] Canon 1118.

[37] Connell, *op. cit. supra* note 4 at p. 30.

the means which God gave under the Mosaic law in the Old Testament. It is significant, however, that while God dispensed from the unity of natural law marriage by permitting polygyny at one time, polyandry remained forbidden as contrary to the primary precepts of the natural law. Nor is it unreasonable that God continues to grant dispensations from the indissolubility of natural law marriage in the New Testament under the Pauline Privilege and the Privilege of the Faith.[38]

These two Privileges are supernatural means for the termination of the natural marriage bond. Their rationale is that a person should not be penalized by the natural law because of his or her conversion to Christianity. Sometimes the reason for the dissolution of the bond by the Privilege of the Faith is the conversion of the baptized non-Catholic to the Catholic faith. According to these Privileges, the natural bond of marriage, between two unbaptized persons, or one baptized and the other unbaptized, must yield under certain circumstances and allow for the institution of the bond of a new marriage, contracted on the supernatural level, because the unbaptized spouse has received baptism and wishes to marry a baptized person.[39]

According to Canon 1120 #1 of the Code of Canon Law[40] of the Catholic Church, "legitimate marriage between unbaptized persons, even if consummated, is dissolved in favor of the Faith by virtue of the Pauline Privilege." This Privilege was promulgated by St. Paul. It provides that if one of two unbaptized parties to the marriage receives baptism, and the other party departs physically or morally, as a result thereof, as determined by interpellations, (i.e.) an examination of the attitude of the unbaptized spouse toward Christianity, the marriage is dissoluble. Canon 1121 #1 states that the converted party must ask the unbaptized party whether

[38] Ayrinhac, *op. cit. supra* note 9 at pp. 300-327.

[39] Canon 1126.

[40] Bouscaren and Ellis, *op. cit. supra* note 9 at pp. 607-611.

he or she is also willing to be converted and to receive baptism, or at least, to cohabit peaceably without blaspheming the Creator. These two questions must be asked " unless the Apostolic See directs otherwise." [41] The Pauline Privilege applies if the second question is answered negatively, and it may apply if the first question is answered negatively. The negative answer may be express or implied.

The Privilege of the Faith results from " the ministerial power of the Roman Pontiff to dissolve non-sacramental marriages under certain conditions when the Pauline Privilege in the proper sense is *not at all applicable,* etc." [42] Both parties to the marriage must have been unbaptized for the application of the Pauline Privilege, but the Privilege of the Faith may be applicable, even though one of the two parties is baptized. There must be a departure of the unbaptized person for the granting of the Pauline Privilege, but not for that of the Privilege of the Faith. Interpellations are normally required in the former, but not in the latter.

Divorce is also possible if the marriage has not been consummated. Thus Canon 1119 of the Code states, " Marriage non-consummated between two baptized parties, or between one baptized and one unbaptized, is dissolved by the very fact of solemn religious profession, and also by dispensation of the Holy See, granted for a just cause at the request of the two parties or even of one of them, against the wish of the other."

[41] Canon 1121 parag. 2.

[42] Ayrinhac, *op. cit. supra* note 9 at pp. 325, 326. A sharp distinction may be drawn between the Pauline Privilege, the extension of the same by the Papal Constitutions (Canon 1125), and the direct dissolution of the natural bond by the Holy See *in favorem fidei,* which really is a *ratum et non-consummatum* case, if the convert was unbaptized and had married a baptized non-Catholic. Where the convert becomes baptized, there exists a ratified marriage of two baptized persons, but not consummated after the second baptism. This marriage may then be dissolved by the Holy See as *ratum et non-consummatum*; see Letter of May 11, 1954, to Brendan F. Brown from Rt. Rev. Msgr. Robert E. McCormick, from Officialis, Archdiocese of New York, Metropolitan Tribunal, citing Bouscaren, Rev. Timothy Lincoln, S.J., and Ellis, Rev. Adam C., S.J., *Canon Law, A Text and Commentary* (2nd ed. 1953) 603, 619, 620.

IV

The State Has a Limited Jurisdiction Over Marriage

But while reason does not positively enable man to discover the supernatural law in regard to the marriage bond, it will make known that marriage is a social institution, so that civil authority, exercised by the State, has some jurisdiction over the natural bond in the case of the unbaptized.[43] The State is the only social authority available for the unbaptized. They are not under the authority of the Church. Hence, the competence of the State may extend not only to the material aspects of their marriage, such as property rights, but also into the field of morals and natural religion with certain limitations.[44] Natural law sets the minimum requirements of a juridical institution, authorizing Church and State to estab-

[43] Bouscaren and Ellis, *op. cit. supra* note 9 at pp. 529-530: The State may temporarily restrain the exercise of the right of marriage when one is afflicted with a contagious disease, provided it puts "itself in agreement with the competent authority, which, in the case of baptized persons, is the Church." But the laws "enacted in several states requiring health certification as a condition for the issuance of the marriage license" fail to "recognize this limitation upon the power of the state."

[44] *Idem* at pp. 462-463: All persons have the right to marry from the natural law, but not the duty. This right precedes the State. But the State may reasonably regulate the exercise of this right or even suspend it for a while for a private or a common good. The State may establish reasonable impediments with regard to the marriages of citizens who are not baptized, but not such as will in effect alienate the right itself. Of course the State has no authority over the sacramental bond resulting from marriages between two baptized persons. See Madden, Joseph W., *Handbook of the Law of Persons and Domestic Relations* (1931) 38, 39. See Brown, Brendan F., *The Canon and Civil Law of the Family* in *Marriage and Family Relationships* (edited by Dr. Alphonse H. Clemens) (1950) 57 at p. 64. Some of the American states have created impediments which are not in accord with the natural law, such as the miscegenation statutes prohibiting marriages between whites and negroes, or between whites and Indians or Orientals. But observance of these laws is dictated by prudence grounded on the natural law in the interest of the public peace since they violate the natural law by limiting a person's right to marry, rather than by commanding "a person to do something prohibited by the natural law." See Brown, Brendan F., *Foreword* xvi, in Del Vecchio, Giorgio, *Philosophy of Law* (trans. by Rev. Dr. Thomas Owen Martin), 1953.

lish additional reasonable requirements in the light of specific social conditions of the time and place.

The State has the right and duty to create a juridical institution of marriage for the unbaptized, and also for the baptized insofar as the purely civil effects are concerned.[45] Manifestly the State has authority over the strictly temporal effects of marriage.[46] These are separable from the essence of marriage. Examples would be the determination of property rights, such as dower or testamentary succession.

The State is competent to establish reasonable diriment impediments, and to grant separation from bed and board, provided it follows the principles of the natural law.[47] But it has no power to dissolve the marriage bond, which is never civil, but either natural or supernatural.[48] Every positive law which purports to confer authority to grant divorce, except in cases coming within the operation of the supernatural law, is contrary to the natural law, and therefore lacks the element of juridicity. This does not mean, of course, that those who avail themselves of such laws are subjectively culpable, if they act in ignorance and good faith.

According to the natural law, all marriages are either valid or invalid from the beginning, on the objective plane, with no human discretion capable of declaring void what was once a valid marriage.[49] Natural law does not admit of a voidable contract of marriage, as does the law of New York, for example, which distinguishes between a voidable marriage, as where one of the parties is under the age of eighteen, and a void marriage, as where a brother and sister have endeavored to marry. In the first case, the voidable marriage may be de-

[45] Vermeersch, *op. cit. supra* note 14 at p. 12.

[46] Canon 1016.

[47] Pope Pius XI Encyclical Letter, *Christian Marriage, op. cit. supra* note 8 at p. 32; Sheedy, *op. cit. supra* note 5 at p. 63 citing Canons 1016, 1038, 1960 and 1961.

[48] Sheedy, *op. cit. supra* note 5 at p. 78.

[49] Pope Pius XI, Encyclical Letter, *Christian Marriage, op. cit. supra* note 8 at p. 31; Ayrinhac, *op. cit. supra* note 9 at pp. 352-354, 372.

clared void, or annulled, at the suit of the party under the proper age, in the discretion of the court. In the second instance, the marriage is void and the court must declare it a nullity.[50] The New York statutes have blurred the concept of annulment as understood by the natural law, by referring to the annulment of a voidable marriage which was originally valid, because annulment according to the natural law declares that a marriage never existed.[51] The concept of voidable marriage attaches, to an objectively valid marriage, a divesting condition subsequent in the form of a discretion, on a subjective and psychological level, and accordingly deviates from the standard of the natural law which knows only conditions precedent completely invalidating a marriage.[52]

These conditions precedent relate to deficiencies in the matter of the internal factors of will and reason, and the external element of form. The State is under an obligation to construct a juridical institution of marriage, applicable to the unbaptized, which will incorporate these conditions precedent into its positive law. Only in this way will the correct line be drawn between valid and void marriage, and consequently between the relevance of divorce or annulment in a particular case.

The contract of marriage is created by an act of the mutual wills of the parties, who actually intend to enter into marriage.[53] Only the parties themselves can supply this act of

[50] See Domestic Relations Law of New York, section 7; Civil Practice Act, sections 1132-1133, 1136, 1139, 1141; and Rules of Civil Practice, Section 275 and following; Domestic Relations Law, section 5.

[51] See Gellhorn, *op. cit. supra* note 34 at pp. 270-271.

[52] Voidability implies dissolubility. See Brown, *op. cit. supra* note 44 at p. 65; Sheedy, *op. cit. supra* note 5 at p. 77.

[53] Pope Pius XI, Encyclical Letter, *Christian Marriage, op. cit. supra* note 8 at p. 5. See Petrovits, *op. cit. supra* note 7 at p. 2: "*Marriage as a Mere Natural Contract.* Marriage may be taken in a two-fold sense, viz., marriage *in fieri* and marriage *in facto esse*. The former is a contract in which a qualified man and woman mutually oblige themselves to an indissoluble union in which by mutual consent each becomes a partial co-principle in the procreation of offspring. The indissoluble union, or the marriage bond thus arising, is called marriage *in facto esse*."

will. Neither the will of the parent, nor of the State, nor of the Church, may be substituted.[54]

Voluntary assumption of reciprocal rights and duties, mutuality in their exercise, and equality in giving over to each other and receiving in return those rights which are proper to the state of marriage, for the performance of acts suitable of themselves for the procreation of children, are characteristics of the contract.[55] The nature of the contract is *sui generis,* however, and may not be exactly fitted into the category of common law contract, based on consideration, or that of civil law contract, founded on *causa.*[56] Its uniqueness as a contract is further apparent from the fact that consent may not alter the nature of the contract, nor the essential laws that govern it, nor the resulting status from which arise duties imposed by law.[57]

[54] Canon 1081, parag. 1.

[55] Canon 1111. See Ayrinhac, *op. cit. supra* note 9 at pp. 190-192 citing Canon 1081, parag. 2.

[56] Madden, *op. cit. supra,* note 44 at pp. 5-7.

[57] Petrovits, *op. cit. supra* note 7 at pp. 2-4: "The leading modern theologians, as well as those of the past, are practically unanimous in teaching that marriage is a real bilateral contract imposing an obligation on the contracting parties by virtue of commutative justice. This needs no proof. It is obvious that the parties concerned form the material object of the contract, while its formal object is the particular mode of life arising therefrom. In this mode of life the contracting parties mutually oblige themselves not only to render those things and to perform those duties which are essential to the very nature of such special contract, but also to abstain from everything incompatible with its nature.... Other contracts may be valid by virtue of unilateral obligation, arising on the part of only one of the contracting parties. The distinctive characteristic of the matrimonial contract is that it binds either both parties or neither of them. . . . Finally, the duration and firmness of the matrimonial contract do not depend upon the contracting parties, for even in the case of only a ratified marriage, the contract is not rescindable at their will. . . . Since marriage is a real bilateral contract, in order that it may be valid, it must possess all the essential characteristics requisite for a binding contract, *viz.* it must be entered into with true, free, mutual, simultaneous, and externally expressed consent by two qualified individuals. This qualification presupposes a physical aptitude for the act of procreation, freedom from all impediments,..." (Note—i.e. of the natural law in our particular treatment).

The consent of each party must be sufficient for the creation of the contract of marriage. In the first place, the sufficiency of consent may be destroyed by factors which directly militate against such consent. These may be produced either by the act of the party or parties, in question, for example, by a simulated consent, or by attaching one or more invalidating conditions to the matrimonial consent, or by the tort or crime of some one else, who induces consent by force or fear.

The consent must not be simulated. This occurs when no consent existed in the mind but a sufficient consent has been manifested.[58] The consent must not depend on a condition which is "inconsistent with the essential object of the marriage contract or destructive of one of its essential properties, as unity or indissolubility." [59] If all right to the proper conjugal act were excluded, for example, by either or both of the parties, their act of will would not constitute a marriage.[60] The same would be true if a primary attribute of marriage, such as the right to the conception of children, were denied and excluded. But exclusion of one or more of the essential attributes of marriage, such as unity or indissolubility, would not invalidate the marriage unless this were done by a positive act of the will so that this exclusion would become the primary object of the will rather than the intention to marry.[61]

"The essence of marriage *in fieri* consists in the manifestation of mutual consent to the matrimonial bond. This implies an exclusive and perpetual right which each of the contracting parties acquires over the body of the other for the purpose of procreation and education of children. The essence of marriage *in facto esse* consists in the conjugal union (*ligamen*). The actual consummation of marriage, and community of shelter, of table and bed, pertain only to the integrity of the matrimonial contract, not to its essence."

[58] Canon 1081 parag. 2. See Ayrinhac, *op. cit. supra* note 9 at pp. 201-204; Canon 1086, parag. 2.

[59] Ayrinhac, *op. cit. supra* note 9 at p. 226.

[60] Canon 1086, parag. 2.

[61] Ayrinhac, *op. cit. supra*, note 9 at pp. 199, 203.

Besides the consent must not have been caused by unjust force or fear, whether it be that which prevents all freedom by physical compulsion, or that which only diminishes freedom of choice by moral coercion without entirely destroying such freedom.[62] It is plain that the former kind of force and fear is invalidating, but reasonable men may differ as to the precise amount of the latter type, namely moral, which is required by the natural law in a particular case to invalidate a marriage.[63] They would agree, however, that the force and fear must be caused unjustly by an external human agent, so that such grave fear results as to compel the victim to choose marriage in order to avoid the evil which is presently threatening and imminent.[64] It must be so overpowering as to justify the resultant fear on the part of a reasonable person.[65] Such is the determination of the Catholic Church regarding the marriage of the baptized.

Secondly, the matrimonial consent may be rendered insufficient by causes which only indirectly affect the will by directly preventing the intellect from adequately presenting the true facts of the situation to the will. These causes may be either physical, as insanity and/or lack of adequate consciousness, or intellectual, such as substantial error and ignorance in regard to the obligations of the marriage contract.

Marriage would be possible, though not prudent, if the insane person actually had lucid intervals, during one of which marriage was contracted.[66] But obviously adequate matrimonial consent would be impossible if all reasoning capacity was permanently absent, as in certain types of mental disease, and in cases where alcohol, or a narcotic, or illness has tem-

[62] *Idem* 205.

[63] *Idem* 205, 206. See Cappello, Rev. Felix M., S.J., 5 *De Sacramentis* (1947), *De Matrimonio, Articulus* V, *De vi et metu*, pp. 586-597.

[64] Canon 1087, paragraphs 1 and 2.

[65] Ayrinhac, *op. cit. supra* note 9 at p. 207.

[66] *Idem* at pp. 192, 193.

porarily but substantially impaired reason or limited consciousness.

Again there would be no marriage if either or both of the parties did not know that marriage was a permanent union of man and woman for the purpose of begetting offspring.[67] But if the simple error related only to the essential properties of marriage, the bond would be created. This is so even where such error is the cause of the contract,[68] as long as the primary intention is to contract marriage in the accepted sense of the word.

Error as to the person renders a marriage invalid, as where A, intending to marry B, marries C instead.[69] But mistake concerning the quality of the person would not invalidate a marriage except where such error " amounts to an error about the person." [70] If A married B under the mistake that B was rich, the marriage would be valid, even though B were poor. Here it is assumed, however, that A has not actually made the condition of wealth a condition *sine qua non* for his matrimonial consent, for that would render the marriage conditional.[71]

The reason element in the natural law institution of marriage is given effect by recognizing that there are certain obstacles or impediments, in the way of lack of fitness, which will prevent certain persons from entering upon valid marriage. All the impediments of the natural law are invalidating, since the attribute of legality, associated with the positive law, is irrelevant. Some of these obstacles arise from physical deficiency, as impotence and lack of understanding, others from potential moral guilt, as the bond of a previous marriage.

It is not required by the natural law that, at the time of

[67] Canon 1082, parag. 1.

[68] Canon 1084. See Bouscaren and Ellis, *op. cit. supra* note 9 at pp. 559, 560.

[69] Canon 1083, parag. 1.

[70] Canon 1083, parag. 2, section 1.

[71] Bouscaren and Ellis, *op. cit. supra* note 9 at p. 558.

the marriage, each party must be able to perform the physical act required for consummation. If it can be anticipated that in the future this will be possible, as is normally the case, the natural law does not invalidate the marriage. Invalidating impotence must be perpetual.[72] But mere sterility, or lack of fertility, does not invalidate a marriage.[73]

According to the natural law, no particular age is required if both parties have sufficient discretion.[74] The impediment of defect of age, relating to bodily incapacity, would arise, however, if either was so young as not to be aware at least in a general way of the nature of marriage, and thus incapable of the matrimonial consent. Most generally, the mere age of reason before puberty does not afford adequate knowledge.

Marriages between persons related in the first degree of the direct line and probably in all other degrees of that line, and probably also in the first degree of the collateral line, are invalid according to the secondary principles of the natural law.[75] Such marriages are not *mala in se* (evil in themselves), however, and may be justified under highly speculative and improbable conditions of a hypothetical character. But they would certainly be *mala per accidens* (evil by circumstances) with reference to the natural law in the present condition of mankind.[76] Such marriages would not be conducive to the physical and mental welfare of the children, who would suffer from such excessive in-breeding. These marriages would be highly detrimental, moreover, to the good of society, which benefits from the extension of affection and

[72] Canon 1068, parag. 1.

[73] Canon 1068, parag. 3.

[74] Bouscaren and Ellis, *op. cit. supra* note 9 at p. 522.

[75] Ayrinhac, *op. cit. supra* note 9 at pp. 170, 171, Bouscaren and Ellis, *op. cit. supra* note 9 at p. 543.

[76] Brown, Brendan F., *The Canon Law of Marriage* (1939) 26 Univ. of Virginia L. Rev. 70 at p. 82.

friendship through marriages between members of families not closely related by blood.[77]

A previous and existing marriage would be an impediment, which results from the inherent unity and indissolubility of the marriage bond.[78] Hence it would be clearly unreasonable to permit a person who is already bound by the bond of a prior marriage to remarry while the former spouse was alive.[79] To authorize such a marriage would be to sanction the crime of adultery, which the impediment seeks to avert.[80]

In addition to the internal factors of will and reason, there is the extrinsic element of actuality or form.[81] The natural law does not prescribe any particular form for the manifestation of the matrimonial consent, authorizing the State to select any reasonable form for the marriage of the unbaptized, while the Church lays down such condition for the baptized.[82] Of course, the consent must be known to both parties.[83] The form must be such that it will enable persons " whose means of perception are confined to the five senses, acting upon physical matter ",[84] to apprehend the expression of the marital consent. Natural law does not exclude vicarious expression through a proxy or interpreter, nor the form of an exchange of letters in *absentia* for serious reasons. Witnesses are not absolutely demanded.[85]

[77] Ayrinhac, *op. cit. supra* note 9 at p. 171.

[78] Canon 1069 parag. 1.

[79] Bouscaren and Ellis, *op. cit. supra* note 9 at pp. 530-532.

[80] Ayrinhac, *op. cit. supra* note 9 at pp. 131-136.

[81] See Brown, Brendan F., *The Indissolubility of Marriage, since 1914, According to the Canon Law of the Roman Catholic Church*, Manuscript to be published; presented before the Round Table on Canon Law of the Fourth International Congress of Comparative Law, University of Paris, August 6, 1954.

[82] Brown, *op. cit. supra* note 76 at pp. 83-85.

[83] *Idem* 83, 84.

[84] *Idem* 84.

[85] Carberry, Rev. Dr., John J., *The Juridical Form of Marriage* (1934), 155.

V

The Legal Order and the Legal Profession Have a Special Responsibility

How has the law of the land met its obligation to formulate and maintain a juridical institution of marriage and divorce which gives effect to the norms of the natural law? This law has more and more encouraged divorce, and thus increasingly contributed to the disruption of the stability of the home.[86] This is manifest from the growing policy of multiplying the number of grounds of divorce in certain jurisdictions.[87] It is apparent from the trend toward the reduction of residential requirements for the acquisition by the plaintiff of domicile,[88] which is the basis of judicial jurisdiction, toward the removal of restrictions from the remarriage of the parties,[89] and toward the detachment of the factor of the moral guilt or fault of the parties to the marriage from the law of divorce.[90] Further evidence may be found in the tendency toward the exemption of the guilty spouse from legal penalty.[91] At the same time, the Anglo-American law has remained faithful,

[86] Brown, Brendan F., *The Canon and Civil Law of the Family* in *Marriage and Family Relationships*, edited by Dr. Alphonse H. Clemens (1950) 57 at pp. 69, 70.

[87] Brown, Brendan F., *Divorce in Civil Jursiprudence from 1906*, 18 The Catholic Encyclopedia, Fourth Section, Supplement II, no page number (1951). The grounds of divorce have so increased that there are more than forty separate grounds now existing in the United States. See National Conference on Family Life, "Working Papers", *American Families: The Factual Background, VI, Legal Status of the Family*, 17, 18, held in Washington, D. C. May 5-8, 1948.

[88] Brown, *op. cit. supra* note 87.

[89] *Ibidem.*

[90] *Ibidem.* See Brown, *op. cit. supra* note 86 at p. 72.

[91] Thus see the *Report* of the American Bar Association to the National Conference on Family Life, Washington, D. C., May, 1948, recommending that "The new premise of prevention should be substituted for the present premise of punishment," in regard to divorce proceedings. See National Conference on Family Life, "Working Papers", Action Area: Legal Problems 3. 73 American Bar Association Reports 103-104, 302-306 (1948).

generally speaking, to the model of the natural law in regard to the requirements for the inception of marriage. It has made great advances in the direction of insuring a permanent family life by the recognition of many new material domestic interests, and by providing remedies for their protection.[92] This is the second great paradox in American life with reference to the law of domestic relations.[93]

There is no doubt that divorce has become a most serious sociological problem in the United States.[94] Statistics disclose the appalling growth of divorce. The divorce curve has risen sharply since the first estimate was made in 1906. At the end of the forty year period from 1906 to 1946, divorces were increasing about fifteen times as rapidly as the population, although in the first decade, 1906 to 1916, they increased only about three times as fast. The divorce rate for 100,000 population rose from 84 in 1906 to 431 in 1946. The highest ratio of divorces to marriages was reached in 1945, with one divorce for about every 3-1/3 marriages. The number of divorces was equal to 26% of the marriages in 1946 compared with 30% in 1945, 24% in 1947, 22% in 1948, 25% in 1949, 23% in 1950, 24% in 1951, and 25% in 1952, the latest figures on a national scale available from the Department of Health, Education and Welfare, Public Health Service, National Office of Vital Statistics, Washington, D. C.[95] The 1953 An-

[92] See LeBuffe, Rev. Dr. Francis P., S.J., and Hayes, James V., *The American Philosophy of Law* (1953) 351 and following.

[93] Brown, Brendan F., *Judge and Lawyer and the Stability of the Home* (1945) 8 Univ. of Detroit L. Journ. 141 at p. 151. See 3 Vernier, *American Family Laws* (1935) paragraphs 158, 161, 162, 225; 4 Vernier, *Idem* (1936) parag. 234; National Conference on Family Life, "Working Papers", *American Families, The Factual Background*, VI, Legal *Status of the Family* (1948) p. 14 and following.

[94] *Secularism*, Statement of the Bishops of the United States, 1947, published by the National Catholic Welfare Conference, Washington, D. C.

[95] Final estimates for 1952 are 392,000 divorces and a rate of 2.5 divorces per 1000 population. Final figures on marriages for 1952 are a total of 1,539,318 and a rate of 9.9 per 1000 population. See *Letter* of November 12, 1954 to Brendan F. Brown from Hugh Carter, Marriage and Divorce Analysis, for Halbert L. Dunn, M.D., Chief, National Office of Vital Statistics, Depart-

nual Summary of the Monthly Vital Statistics Report, Part I, issued by this Office, containing divorce figures for twenty-one states for 1953, shows that the combined total for these states is quite close to their combined total for 1952. The United States still holds the world's record in the matter of divorce, unsurpassed even by pagan Japan and atheistic Russia.[96]

Members of the legal profession have a special responsibility to assist in the maintenance of the stability of family life. The juridical order through which civil authority functions for the granting of divorce is in their hands. They occupy a more strategic position than those in the other sociological professions, who can do no more than advise and recommend. It is the legislator who selects those values of the family which will receive the support of politically organized society. That support is delineated with precision in relation to specific facts by the judge in the course of adjudication. The practicing lawyer, who handles divorce cases, plays an important role in bringing the issue, of whether or not the State should declare that a particular marital bond ought to be terminated, within the sphere of the judicial process.

It is rather well known, however, that a higher standard of duty is imposed upon lawyers than upon judges, relative to their respective cooperations in dissolving the marriage bond.[97] This higher standard stems from the fact that " unlike judges, lawyers are free to choose what business they will accept and

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ment of Health, Education, and Welfare, Public Health Service, Washington, 25, D. C.; also Brown, Brendan F., *Divorce in Civil Jurisprudence from 1906*, 18 The Catholic Encyclopedia, Fourth Section, Supplement II, no page number, (1951); and LeBuffe and Hayes, *op. cit. supra* note 92 at p. 346, citing statistics given by Walsh, Justice M. F., Supreme Court of New York, in *Marriage and Civil Law* (1949) 23 St. John's L. Rev. 209 at pp. 225, 226.

[96] Sheedy, *op. cit. supra* note 5 at p. 70; Ayrinhac, *op. cit. supra*, note 9 at p. 372.

[97] Sheedy, Very Rev. Charles E., C.S.C., S.T.D., *The Christian Virtues* (1951) 153, 154.

what business they will reject."[98] The judge is a public officer and does not have the same liberty as the lawyer who is engaged in private practice. By the very nature of his office, a judge is obliged to decide cases in accordance with the existing positive law, despite his personal views. The harm resulting from his cooperation is far outweighed when balanced against the irreparable damage to the public good which would follow from the resignations of all conscientious judges on the ground that they could not in conscience apply the law of divorce.[99] In the hearing of divorce cases, however, the natural law makes it incumbent upon the judge to act so that it will be certain that he does not personally favor the granting of the divorce, or the implicit right of remarriage.[100]

The lawyer stands in the place of his client so that if the client has the moral right to seek a divorce, the lawyer is entitled in conscience to be his attorney.[101] But if the client seeks an unworthy divorce, then the attorney proximately cooperates in disobeying a command of the natural law, and becomes partly responsible for all the evil consequences, such as the occasion of adultery, the public flouting of the ideal of indissolubility, scandal, and the undermining of society.[102] Since these consequences are public, as well as private, sole justification may not be sought in the fee earned, as such, for this is only a private reason.[103] Theoretical justification may be found in the fee if it were absolutely necessary to avert great economic need, or to maintain the lawyer in his profession.[104] But this is seldom, if ever, the situation,[105] so that

[98] Sheedy, Very Rev. Charles E., C.S.C., S.T.D., *Mimeographed Material for Practicing Lawyers* (1953).

[99] Ayrinhac, *op. cit. supra* note 9 at pp. 372, 373; Sheedy, *op. cit. supra* note 97, at p. 154.

[100] Sheedy, *op. cit. supra* note 5 at p. 82.

[101] *Idem* 67.

[102] Ayrinhac, *op. cit. supra* note 9 at pp. 373, 374.

[103] *Ibidem.*

[104] *Idem* 374.

[105] Bouscaren and Ellis, *op. cit. supra* note 9 at p. 629.

actually there remains only a justification derived from the protection of a public, social, or supernatural interest.[106]

Divorce may be discouraged by a number of means, as by making it more difficult to obtain than at the present time. It may be curbed by the development of marriage counseling centers and programs of education as to the obligations of married life and the benefits to be gained from the adoption of methods and techniques borrowed from psychiatry and the social sciences.[107] But more effective than all these means is fidelity in practice to the ideal of marriage, as a life-long monogamous union, which the natural law presents to all reasonable men. For those who encounter difficulties in living up to the ideal, there is available the power of divine grace to strengthen their wills and sustain their efforts to obey the authority of the natural law.

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[106] Sheedy, *op. cit. supra* note 5 at pp. 67, 68.

[107] Gellhorn, *op. cit. supra* note 34 at pp. 327, 359, 360, 364-366. For general reference purposes, See: LeClerq, Dr. Jacques, *Marriage and the Family* (transl. by Rev. Thomas H. Hanley, O.S.B., Ph.D.) 1941; Maritain, Dr. Jacques, *The Rights of Man and the Natural Law* (1943); and Messner, J., *Social Ethics* (transl. by J. J. Doherty) 1949.

THE CATHOLICS IN THE COMMUNIST COUNTRIES AND THE VATICAN RADIO *

NOWADAYS it is entirely clear that the communists try to destroy religion in the countries which they dominate. To this end they use all means, preferably anti-religious education of youth and persuasion and re-education of adult people, even of priests. If somebody opposes them, they do not hesitate to "liquidate" him, usually under the pretext of anti-state activity.

Wherever the Reds control the government they use their power to eliminate all foreign influence upon their citizens. There is a strict state censorship on communications with non-communist countries. Every letter to or from abroad is opened. Newspapers, reviews and books are hardly allowed to come in. Radio broadcasts from the free world directed to communist countries are strongly jammed.

This ban applies especially to the Vatican.

The Communist Break off with the Vatican

In the communist press and propaganda the Vatican is depicted as an enemy of the people. The Vatican policy, the communists claim, is in the service of imperialistic warmongers of the capitalistic world. Such propaganda is aimed to destroy the confidence of the Catholic people toward the Holy See. Simultaneously, it serves as a justification for the communist anti-ecclesiastical machinations.

The usual way of the Holy See in acting for the spiritual welfare of the Catholic people in any country is through the papal delegates. The papal or apostolic delegate usually

* The author of this article is a Franciscan priest, who escaped from a Communist concentration camp in Czecho-Slovakia in 1951. He was Professor of theology in the Franciscan Seminary in Zilina, Czecho-Slovakia.—Editor's note.

bears the title of nuncio or internuncio. He is a representative of the Holy See in a country. Through him the Catholics of a country are connected with the Vatican, through him the bishops receive rescripts from the Holy See and send their own reports to the Vatican.

The communists do not wish that the Catholics under their control have any connection with Rome. Under different pretexts, they expelled the papal representatives from the communist countries, and recalled their envoys from the Vatican. (Poland is the only communist country which still has diplomatic relations with Rome.)

In Czecho-Slovakia the expulsion of the papal internuncio occurred in connection with the so-called " Catholic Action " movement. When the communists in Czecho-Slovakia took over full governmental power in February, 1948, they soon suppressed all Catholic societies. Among other Catholic institutions, especially the Catholic Action exerted a great influence on the Catholic people. Instead of the suppressed genuine Catholic Action, the communists of Czecho-Slovakia organized their own " Catholic Action " to fool the innocent people. The aim of this fake " Catholic Action " was to cut off the Catholics of Czecho-Slovakia from the Catholic Church. Admonished by their bishops, the Catholics of Czecho-Slovakia did not join the schismatic " Catholic Action " movement, and it soon fell.

It can be assumed that the papal internuncio of Prague, Msgr. Gennaro Verolino, dealing with the bishops of Czecho-Slovakia had his part in fighting the schismatic movement. But the communist government of Prague accused him of causing an anti-state revolt which took place in Slovakia in July of 1949 in connection with the " Catholic Action " movement. Msgr. Verolino had to leave Czecho-Slovakia immediately. In March, 1950, the communists expelled the secretary of the Prague internuntiature, Msgr. Ottavio De Liva, and closed the internuntiature.

Also direct correspondence with the Vatican was practically cut off. No Vatican papers are allowed to come in.

From July of 1949 on, the contact of the Catholics in Czecho-Slovakia with the Holy See was crippled. From March of 1950 on, there remained only the Vatican radio as a channel of communications between the Vatican and the Catholics of Czecho-Slovakia.

The contacts of other Catholic countries behind the Iron Curtain with Rome were curtailed by similar methods.

Decrees of the Holy See Regarding Communist Countries

Meanwhile the Holy See made many important enactments regarding the Catholics under communist rule.

First of all, the Supreme Congregation of the Holy Office issued a decree condemning the "Catholic Action" movement in Czecho-Slovakia as schismatic. The decree proclaimed as schismatic and apostates from the Catholic Church all the organizers, propagators and members of the movement. They all were punished in accordance with canon 2314 by the excommunication specially reserved to the Holy See. The decree was issued in the name and by the authority of the Pope on June 20, 1949, and it was published in the *Acta Apostolicae Sedis* on July 2, 1949.

In the same issue of the *Acta* appeared a decree of the same Congregation, whereby Catholics are forbidden to be members of communist parties. Catholics in communist parties must be denied the sacraments, until they leave the party. Those who profess, defend and spread the materialistic and anti-Christian teachings of communism (ideological communists) are subject to the excommunication specially reserved to the Holy See in accordance with canon 2314. The decree was approved by the Roman Pontiff and was issued on July 1, 1949.

On August 11, 1949, the Congregation of the Holy Office issued a declaration governing the conduct of priests in the

performance of marriages between a Catholic and a communist.

The same Congregation of the Holy Office gave another declaration on July 28, 1950, in the form of an admonition (*monitum*), stating that Catholic boys and girls are forbidden to enter communist organized youth groups. Parents who enroll their children in such groups and the children themselves may not receive the sacraments. The leaders of these groups who imbue the youth with doctrines contrary to Catholic faith and Christian morals, fall into excommunication specially reserved to the Holy See.

On June 29, 1950, the Congregation of the Council issued a decree placing the ban of excommunication specially reserved to the Holy See upon those who plot against the legally constituted hierarchy of the Church or who attempt to undermine its jurisdiction; who occupy or accept a church office, benefice or dignity without canonical provision; and upon all those who participate in such activities directly or indirectly. These punishments are based partly upon the old Canon Law and partly upon the canons of modern Canon Law (cf. can. 2331, § 2; 2334, n.1°-2°; 147, §§ 1,2; 332, § 1; 2394). The decree was issued by the authority of the Holy Father (*"Sanctissimus Dominus Noster Pius Pp. XII statuere dignatus est"*). It was published in the *Acta Apostolicae Sedis* on September 2, 1950.

On March 17, 1951, the Congregation of the Consistory issued a declaration which summarized the various ignominies of the Communists in Czecho-Slovakia against the bishops and the priests as well as the encroachment of the communist regime upon ecclesiastical jurisdiction. According to the canons of the Code of Canon Law (can. 2341; 2343, § 3; 2334, n.2°) and the above mentioned decree of the Congregation of the Council the penalty of excommunication simply or specially reserved to the Holy See falls on all perpetrators and participants of such misdeeds.

Following a special faculty given by the Holy Father, the

Congregation of the Holy Office issued a decree on April 9, 1951, which states that whoever consecrates a bishop or whoever accepts such consecration without a special nomination or confirmation by the Holy See falls into excommunication most specially reserved to the Holy See (*excommunicatio specialissimo modo reservata*). The decree also states that even the duress of fear (*metus gravis*) does not exempt one from penalty. The decree was obligatory from the day of its promulgation in the *Acta Apostolicae Sedis* (April 21, 1951).[1]

All the above mentioned decrees and declarations of the Roman Congregations were published in the official organ of the Holy See, *Acta Apostolicae Sedis,* and read over the Vatican radio.

In September of 1951, the Sacred Penitentiary announced, through the medium of the Vatican radio, that the Holy Father has granted extraordinary faculties to the priests under the communist yoke. All priests who have received valid jurisdiction for hearing confessions from their ordinaries, retain it even if forcibly removed to another diocese. The Supreme Congregation of the Holy Office announced through the same channel special faculties of the Holy See given to the priests of Czecho-Slovakia. Provided that the priests possess a valid jurisdiction from their ordinaries and there is no possibility to deal with the legitimate authority of the diocese, they can perform the functions of a pastor in the whole territory of the diocese for the spiritual welfare of the souls, wherever no other legitimate pastor is known. In such cases they have a faculty to dispense from all matrimonial impediments which the Church usually dispenses, and other extraordinary powers.

These faculties were broadcast in Latin and were not published in the *Acta.*

In Czecho-Slovakia the Catholics were informed about the proclamation of the Assumption of the Blessed Virgin Mary

[1] According to canon 2370 the penalty for the consecration of a bishop without the papal nomination or confirmation was a suspension reserved to the Holy See.

as an article of faith only through the Vatican radio (November 1, 1950).

Similarly, only through Vatican broadcasting channels did the priests and the faithful learn of the new regulations concerning the Eucharist fast, in effect since January of 1953, and of other new disciplinary and liturgical regulations, and of important encyclicals and messages of the Holy Father.

Communist Attacks Against the Vatican Radio

The communist slanderous propaganda passes no opportunity to attack the Pope, the Vatican and its policies. With a special vehemence they besmear the Vatican radio, which is, according to the communists, a medium of instigation against the people's democratic states.

No upright citizen, they claim, may allow himself to be swayed by Vatican provocative propaganda, nor may he listen to the Vatican broadcasting programs.

However, the more the communists raged against the Vatican radio, the more the Catholics in Czecho-Slovakia listened to it. Therefore, the government ordered a jamming of Vatican broadcasts in both the Slovak and Czech languages. At present, only with difficulty one can listen to Vatican broadcasts through this jamming.

After the Supreme Congregation of the Holy Office issued the decree against the communist "Catholic Action" movement in Czecho-Slovakia and the decree against communism, the Red government of Prague proclaimed as anti-state activity and treason the publication and fulfillment of these and other similar decrees, broadcast by the Vatican radio.

The communists in Czecho-Slovakia prohibited the obedience of the ecclesiastics to the Vatican, and simply denied the validity of Canon Law in that country.[2]

[2] During the mock trial against ten ecclesiastics (mostly superiors of religious orders) before the State Court in Prague, on April 5, 1950, Anthony Hobza, professor of International Law at Prague University, gave such a statement: "The Vatican is still guided by Canon Law, which . . . the modern state does not acknowledge . . . Therefore, there is not, and there

They are aided by some "patriotic" priests, servile instruments in the hands of the communists. They say that the condemnation of communism and of the "Catholic Action" and other enactments of the Vatican have no validity in Czecho-Slovakia, because they were not promulgated in that country. Reading the decrees over the Vatican radio, they say, is not the proper channel for announcement of papal decisions. The enactments of the Roman Congregations do not have the nature of a universal Church law. The Roman Congregations, and even less the Vatican radio, are not the same as the Pope or the Holy See. Thus, the decrees and declarations of the Roman Congregations broadcast through the Vatican radio are by no means Church laws which should bind upon the Catholics of Czecho-Slovakia.

Do these and similar phrases of communist agents and misguided priests have any legal basis?

To give a correct and clear answer, it is necessary to introduce several fundamentals of Canon Law, that affect this matter.

Roman Congregations and Church Laws

The legal authority for enactment of laws binding upon the whole Church is the Supreme Pontiff, the Pope. As Vicar of Christ and successor of St. Peter in the Primacy, he has the fulness of power in the Church (can. 218, §§ 1, 2).

In Rome, the Pope works through the Congregations, Tribunals and Offices. These institutions headed by and depending upon the Pope form the Holy See. By the term "the Apostolic or Holy See, wherever it occurs in the Code of Canon Law, is meant not only the Roman Pontiff, but also, unless the context proves the contrary, the Sacred Congregations and the Roman Tribunals and Offices through which the

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cannot be any canonical subordination or obedience of the Czecho-Slovak bishops and other Czecho-Slovak ecclesiastical functionaries to a foreign power, as is the Vatican."—Cit. by Joseph A. Mikus, *The Three Slovak Bishops,* (Passaic, N. J., 1953), pp. 39-40.

Roman Pontiff transacts the affairs of the universal Church" (can. 7).

The Sacred Congregations are an instrument in the hands of the Pope, and they possess as much power as is granted them by the Roman Pontiff.

The enactments of the Roman Congregations have the validity of universal laws, when they are issued as such by the authority, in the name of, or with a special faculty of the Pope.[3]

Among the aforementioned decrees concerning the communists and their anti-ecclesiastical machinations, the decree of the Holy Office condemning the schismatic "Catholic Action" movement in Czecho-Slovakia, the decree of the Congregation of the Council regarding the onsets against the church authority and the illegal occupations of church offices, and the decree of the Holy Office concerning the consecration of bishops without papal authorization were issued in the name and by the authority, or with a special faculty of the Roman Pontiff.

The other element required for enactment of a law is its promulgation. Through the promulgation of a law the legislator manifests his decision to the public, and makes the law binding. Before promulgation a law binds no one. Canon 8, § 1, states: "Laws become effective by their promulgation".

There are various methods of promulgating laws.

"The laws enacted by the Apostolic See are promulgated by being published in the official organ of the Holy See *Acta Apostolicae Sedis,* unless some other mode of promulgation is prescribed in particular cases; and they become obligatory three months after the date affixed to the number of the *Acta* in which they appeared, unless the nature of the law requires that it take effect immediately, or unless the law itself especially and expressly fixes a shorter or longer period" (can. 9).

The three abovementioned decrees were promulgated in

[3] Cf. can. 243, §§ 1, 2; 244, § 1. Franc. X. Wernz-Petrus Vidal, S. I., *Ius Canonicum,* (Roma, 1938), pp. 161-162.

the *Acta* by the authority of the Pope, and thus have a character of universal church laws.

The usual three month period between the promulgation and the time when the law becomes effective has the special purpose of enabling those whom the law will bind to become acquainted with it. Whether or not they really become acquainted with the law does not alter the case. The law becomes effective as stipulated in its promulgation.

For the enactment of a new church law it is not necessary to promulgate it in each diocese unless such method is stipulated in a particular case. It suffices that the law is promulgated in a prominent and usual way by which it becomes known.[4]

The other abovementioned enactments of the Roman Congregations concerning the communist anti-ecclesiastical encroachment were not issued by the authority of the Pope. They do not have the character of a new church law. Most of them are applications of the valid Canon Law to the particular cases. Such declarations bind by the force of the original law.

The reverence and obedience toward all enactments of the Holy See, even if they are not laws binding upon conscience, is required (cf. can. 1324).

The ordinary approval of the decrees of the Congregations by the Pope and their publication in the *Acta* give them a greater importance, but do not change their nature, do not make them universal church laws.[5]

Divulgation of Church Laws

The communists and their fellow-travellers from the ranks of "patriotic" priests insist that the decrees and declarations of the Holy See are not binding in Czecho-Slovakia, because proper methods have not been used in publishing them.

[4] Wernz-Vidal, *op. cit.*, p. 192; B. Ojetti, S. I., *Commentarium in Codicem Iuris Canonici*, (Roma, 1927), pp. 84-85.

[5] H. Noldin-A. Schmitt, S. I., *De Principiis*, (XVII Ed. Innsbruck 1940), pp. 243-245.

The end of the publication or divulgation of the law is to acquaint people, whom it concerns, with the law. There is a rule in Canon Law concerning the promulgation of a church law, but not concerning its divulgation. According to Canon Law the bishops are obligated to urge the observance of church laws among their faithful (cf. can. 336, § 1; 1261, § 1), and the religious superiors to promote the knowledge and observance of the decrees of the Holy See regarding religious (can. 509, § 1), but there is no rule about the method of publishing, announcing and divulging apostolic decrees.

The traditional method of publishing the decrees and declarations of the Holy See in Czecho-Slovakia as well as in other countries was the following: The bishops obtained an official text of the enactment, published it in their diocesan paper (with explanation, if necessary), and ordered the priests to acquaint the faithful with the law or directive from the pulpits.[6]

After the communist harassments against the Church organization in Czecho-Slovakia, in 1949 and thereafter, this method of announcing the decisions of the Apostolic See was no longer possible. The communists curtailed the bishop's communication with the Vatican and with the priests of their dioceses. The papal internuncio was expelled, the *Acta Apostolicae Sedis* and all mail from the Vatican was intercepted.

Nowadays, there remains one medium, by which the Holy See can speak to the faithful behind the Iron Curtain. This medium is the Vatican radio.

The Vatican radio is a wholly adequate medium for the announcement of the laws and declarations of the Holy See. Today, radio receivers are widespread even in countries with a communist regime. (The communists utilize radio to spread their propaganda and false teaching among the listeners.) Despite heavy jamming, at least some listeners catch the broadcasting of the important decrees and directives of the Holy See, because the Vatican radio repeats them

[6] B. Ojetti, S. I., *op. cit.*, p. 81.

several times. Through the Vatican radio and then through "whispering information" all important decisions of the Holy See become sufficiently known to the people behind the Iron Curtain.

Most of the abovementioned decrees and declarations of the Holy See imply Church punishments upon the transgressors.

Some people in Czecho-Slovakia claim immunity from these punishments because of the inadequate publication of these decrees and thus because of ignorance.

Ignorance, but only inculpable, releases from the guilt of transgression of the law, and thus from the church punishment. There is affected ignorance (*ignorantia affectata*) which is by no means inculpable. It occurs when a person purposely refuses to become aware of a law in order to avoid its observance. This kind of ignorance does not release from any church punishment (can. 2229, § 1). Crass ignorance (*ignorantia crassa et supina*) of the law or its penalties occurs when a person could easily procure a knowledge about the law, but he does not care. Such ignorance is culpable and, under normal conditions, does not release one from punishment, which is inflicted by reason of the transgression itself (*poenae latae sententiae*). It releases only in cases where special malice is required for the inflicting of punishment (can. 2229, §§ 2, 3, n.1°).

It can hardly be admitted that, after the repeated broadcasting of the Holy See's decrees and declarations, anyone can claim ignorance about those enactments and thus immunity from the punishments connected with their transgressions.

Promulgation of the Church Law by Vatican Radio?

There is yet one more question, at present of a theoretical nature only. Could the Vatican radio under certain circumstances become the medium for promulgating new ecclesiastical law?

Canon 9 of the Code of Canon Law, in determining the promulgation of ecclesiastical laws, states that laws enacted by the Apostolic See are promulgated by being published in the official organ of the Holy See, the *Acta Apostolicae Sedis,* "unless some other mode of promulgation is prescribed in particular cases" (can. 9).

In the past, church laws were promulgated by the voice of a courier or by being posted in a public place, usually on the doors of the Basilica of St. John Lateran, of St. Peter at the Vatican, of the Apostolic Chancery and in *Campo dei Fiori.*[7]

The method of promulgation depends on the legislator. Canon 9 recognizes in particular cases modes of promulgation other than publication in the *Acta Apostolicae Sedis.* If it were necessary or advantageous to promulgate an ecclesiastical law over the radio, the Holy See could use this medium to proclaim a law binding upon all Catholics over the world.

Vatican Radio at the Present Time

From what has been said there arises the fact that the Vatican radio today plays an outstanding role in the ecclesiastical organization. Through this means oppressed Catholics behind the Iron Curtain learn what is happening in the Catholic world. Through it the Church of Silence hears words of encouragement and strength.

What is, however, more important is the fact that through this medium, and only through it, Holy Mother Church can today inform her persecuted children of the truths of faith and of the disciplinary laws which bind upon conscience.

Vatican radio, the communists say, is neither the Pope nor the Holy See. That is right. But the Holy Father uses this medium in his function as the supreme teaching and ruling authority in the Catholic Church. Today, the Vatican Radio is practically the only instrument of the infallible teaching authority of the Catholic Church and of her reigning power in regard to the Catholics behind the Iron Curtain.

[7] Ojetti, *op. cit.,* p. 84.

Holy Mother Church is cognizant of the extraordinary significance of the radio in the present age. The Apostolic See uses this modern convenience for the spiritual welfare of souls in contrast to the communists who use the radio to demoralize and seduce people to error. Against the falsehoods of the communist radio, the Vatican radio spreads the voice of truth.

The circle of proven workers of the Vatican broadcasts perform their work excellently in many languages, and with continual improvement.

I tell this from my personal experience, for until recently I was one of those slaves under the communist domination who pressed his ear to the radio receiver like a prisoner to the barred window of his cell. From the Vatican broadcasts, even as masses of others, I drew strength and courage in the hours of anguish and despair.

THEODORIC J. ZUBEK, O.F.M., S.T.D.

Cases and Studies

PRE-MARITAL INVESTIGATION *

Introduction

Your Committee of Arrangements for this National Convention has graciously invited me to address you on the important subject of pre-marital investigation. I am not insensible of the high honor they have conferred on me and I am deeply grateful for the opportunity it affords to present and discuss this important matter with you. I am sure you will realize as I do, the desirability of attaining, as far as possible, a degree of uniformity in our diocesan and inter-diocesan procedure.

When this opportunity was offered to me, I objected to it on the ground that as Officialis burdened with *post-marital* investigation, I felt inadequate to the preparation of a paper on *pre-marital investigation.* Your learned and distinguished Vice-President, Dr. Julian, anticipated my objection with the remark that if more attention were paid to the pre-marital investigation, there would be less work for those concerned with post-marital problems. In the light of that remark, I readily accepted his very kind invitation, hopeful of the results.

The Pre-Marital Investigation

Canon 1020 [1] promulgates the obligation and essential elements of the pre-marital investigation. Since the Code, two Instructions

* Paper presented by the Right Reverend Joseph I. Johnson, J.C.D., Officialis, Diocese of Springfield, Mass., at the National Convention of The Canon Law Society of America, held October 12-13, 1954, at Boston, Mass.

[1] Canon 1020:

1. "The pastor whose right it is to assist at the marriage shall diligently, in advance, and at a suitable time investigate whether there be any impediment to the marriage."

2. "Let him question both the groom and bride, even separately, and with prudence, as to whether they are bound by any impediments; whether they are, especially the woman, freely consenting to the marriage, and whether they are sufficiently instructed in Christian Doctrine, unless, in view of the character of the persons concerned, this last interrogation be needless."

3. "To the Ordinary of the place it pertains to issue special rules for this pastoral investigation."

were issued by the S. C. of the Sacraments to Ordinaries and pastors to supply them with suitable rules for the proper and careful examination of the parties.

The Instruction of July 4, 1921,[2] stressed in particular the obligation of obtaining a baptismal certificate if the baptism of either party to the marriage took place outside the parish of the investigating pastor, and of sending notification of the marriage to the pastor of the parish of baptism. Ordinaries were instructed to implement the proper fulfillment of these obligations with canonical sanctions if necessary. This Instruction was occasioned by the complaints of the Bishops of Italy regarding carelessness in these matters in marriages of immigrants.

The increasing number of nullity pleas brought before the Tribunals of the Church occasioned the second Instruction. This Instruction, "*Sacrosanctum matrimonii*," issued June 29, 1941,[3] is far more comprehensive and insistent. It reminds Ordinaries and pastors that their obligation of a thorough pre-marital investigation for every marriage binds *sub gravi* even if the pastor is morally certain that nothing stands in the way of a particular marriage.

To assist the Ordinaries and pastors in satisfying this grave obligation, the requirements of the Code, as contained especially in Canon 1020, are explained in detail, and a definite form of investigation to be used for *all* marriages is indicated.

The purpose of this paper is to prepare the way for a discussion of the possibility and practicality of achieving uniformity among the dioceses of our country in putting into practice the "*Sacrosanctum*." It was thought, too, that we would all benefit by reviewing the prescriptions of the Instruction and pooling our practical experiences of the past thirteen years.

* * * * *

Outline

This paper, in keeping with the general plan of the Instruction, presents its various regulations according to the following outline:

Part I. General Directives for Priests.

Article 1. What priest is responsible for the pre-marital investigation?

[2] *AAS*, XIII (1921), 348-349.

[3] *AAS*, XXXIII (1941), 306, sq.

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This paper follows the general plan of the Instruction. At the end of each article is presented a brief commentary on the laws of the Instruction summarized in that article and containing practical suggestions gathered from various archdioceses and dioceses of the country. In the *Appendix* you will also find samples of the new Springfield forms. In making up these forms, we tried to incorporate the practical solutions to investigation problems found by you and sent to me in the way of helpful suggestions and sample forms. The Springfield forms are presented to assist with this paper and to serve as the basis of constructive criticism during the discussion.

Part I. General Directives for priests.

These directives are based on Canon 1020, paragraph 1. "The pastor whose right it is to assist at the marriage shall in due time beforehand carefully investigate whether there is any obstacle to the marriage."

Article 1. What priest is responsible for the pre-marital investigation?

The responsibility for the pre-marital investigation rests with the *pastor* whose right it is to assist at the marriage. This is normally the pastor of the parish of the bride, to whom the Canon Law of the Church gives preference.[4]

[4] Can. 1097, § 2.

The *groom's pastor,* however, *may* of his own accord, and *must* at the request of the groom or of the bride's pastor, conduct the investigation to determine the groom's freedom to marry. He is required to forward at once to the bride's pastor the duly completed and signed questionnaire together with the baptismal certificate and other pertinent documents.

Commentary

The pastor " whose right it is to assist at the marriage " has also the definite obligation of the pre-marital investigation. He is the pastor of the parish where the parties have a domicile, a quasi domicile, or a month's residence. The parties have the right to choose among these parishes.[5] If they belong to different parishes, it is the bride's pastor, as a general rule, who assists at the marriage, and has the ultimate responsibility for the investigation. For a just reason, for example, convenience of the parties, the marriage may take place in the parish of the groom, and in this case it is the pastor of the groom who must make the inquiry.[6] It seems to be the mind of the Congregation that the proper pastor of each party conduct the investigation of his subject if they belong to different parishes. Some Ordinaries have made this a law in their diocese in order to strengthen this otherwise weak link in the pre-marital investigation.

When one of the parties is a non-Catholic, the investigation of both parties is usually made by the pastor of the Catholic party, who should, however, enlist the aid of the pastor of the place of residence of the non-Catholic. Some diocesan statutes always give preference, in the right to assist, to the pastor of the parish of the bride, Catholic or non-Catholic, and in this case it is his responsibility to pursue the investigation.

In the case of a *vagus,* or person of no fixed abode, the pastor of the parish of actual residence has the right to assist at the marriage and also the duty of investigating, but he must refer the case to the Ordinary.[7] The Instruction directs that for the purpose of this law of recourse to the Ordinary, immigrant workers, although they retain domicile or quasi domicile in their native land or elsewhere, are to be considered persons of no fixed abode. The same is true of

[5] Fulton, *The Prenuptial Investigation,* p. 56.

[6] Can. 1097, § 2.

[7] Can. 1032.

those with only a month's residence and no domicile or quasi domicile elsewhere.

Any of the pastors mentioned above may, for a just reason, delegate the duty of investigating to another priest,[8] who ordinarily would be an assistant priest attached to the parish. The just reason for such delegation is found in the desire to give practical training and experience in parish work to the assistant.[9] Furthermore it provides for a more efficient investigation in parishes, where the large number of marriages would impose a real burden on the pastor, if he had to make each investigation personally.

Under the name of pastors come all those who by law are made equivalent to pastors in this matter,[10] such as administrators, substitutes, military chaplains, etc. These latter should enlist the aid of the pastors of home parishes since obviously they are in a better position to make a thorough investigation.

In the extraordinary case of danger of death the priest is not allowed to omit all pre-marital investigation, but should assure himself, by the oath of witnesses, if possible, of the absence of impediments and of the actual freedom of consent.[11]

Article 2. How shall the priest proceed in making the investigation?

The parties should be examined separately according to an approved questionnaire. Prudence should be observed in questioning about impediments or circumstances that might be embarrassing.

This investigation should be conducted before if possible, or at least during, the publication of the banns, in order to allow recourse to the Chancery when necessary.

The investigation must cover the following specific points:

1. The reception of baptism and confirmation;
2. The parishes to be notified of the marriage;
3. Whether the parties are of age or minors;
4. Whether both are Catholics;
5. Whether sufficient proof is had of the dissolution of a previous bond by death, or by a declaration of nullity, or by a dispensation from a non-consummated marriage, or *in favorem fidei.*

[8] Cappello, *De Matrimonio,* n. 151.

[9] Bastnagel, "Parish Assistants and the Prenuptial Investigation," *The Jurist,* VII (1947), 173.

[10] Fulton, *op. cit.,* pp. 53, 54.

[11] Can. 1019, § 2.

Commentary

The documentary proof of baptism should be issued within six months of the date set for the marriage in order to provide, if need be,[12] notations concerning confirmation, marriage, subdiaconate, solemn religious profession, etc., as well as that required under Article 225 of the Instruction of the S. Congregation, August 15, 1936, concerning a possible declaration of nullity and prohibition of future marriage.

With regard to the certificate of confirmation, the marginal notation on the baptismal record would suffice. It would be well to remind the pastors of their obligation with regard to this notation because of the widespread neglect in this matter. If the parties have never been confirmed, they should be reminded of Canon 1021, paragraph 2, which requires confirmation to be received before marriage *if it can be done without grave inconvenience.*

The baptismal records will show whether or not one or both parties are minors (that is whether or not they have completed the twenty-first year). In the case of a minor, the parental consent in writing and witnessed preferably by the priest must be obtained.[13] If this consent is unreasonably withheld, the pastor must present the case with his opinion to the Ordinary for a decision.

Cases have been known to occur where a Catholic already married has declared himself unbaptized in order to avoid getting the record and thus revealing the previous marriage. If the priest has any doubt, from the names, etc., that this may be the case, he should consult the baptismal records of the place of origin.

In obtaining pre-marital information, the pastor should exercise great care in requiring identification of parties not known to him personally. *This is the very basis of the investigation.* Identification papers bearing a photograph would be ideal, of course. If such papers are not available, the pastor may content himself with any signed certificate or document, that is, auto license or social security card, taking care to compare the signature with that signed by the party at the end of the questionnaire. Complete details of identification should be obtained at the beginning of the questionnaire as a help to further questioning. Thus the possibility of relationship may be suspected from the mother's maiden name, age may indicate the need of parental consent, a notable difference of age might cause suspicion of duress, etc.

[12] Can. 470, § 2.

[13] Can. 1035.

If it is found that either party is a lapsed Catholic or apostate or a member of an atheistic or condemned society and the party remains recalcitrant, marriage can only be permitted ofter recourse to the Ordinary and with the usual written guarantees. The question regarding condemned societies should list the most common ones since many among the clergy as well as the laity ignore exactly which ones (other than the Masons) are condemned.

Article 3. When must the Chancery intervene? [14]

a. *Litterae Testimoniales* from the Chancery must be obtained when the pastors of the parties are of *different dioceses.* If they are of different dioceses, and if the bride's pastor is to assist at the marriage, the matrimonial documents regarding the freedom of the groom should be transmitted to the bride's pastor through the groom's diocesan Chancery, and a Testimonial from this Chancery should endorse the groom's freedom to marry. If, on the other hand, they are of different dioceses, and the groom's pastor is to assist at the marriage, the documents are to be sent to him through the bride's diocesan Chancery together with its Testimonial of her freedom to marry.

b. A *Nihil Obstat,* or authorization to proceed with the marriage, must be obtained from his own Chancery by the pastor who assists at a marriage in which the pastors of the parties are of different dioceses.

The procedure in obtaining this *Nihil Obstat* whenever necessary is as follows: The pastor who is to assist at the marriage should send to his own Chancery in due time the properly executed questionnaire of his subject, together with the completed questionnaire received from the pastor of the other party, and the Testimonial of the diocesan Chancery of the other party. These papers should be accompanied by the other necessary pre-marital documents, including the document known as a Transcript. This Transcript combines (for clarity in presenting the papers to the Chancery), a brief summary of the results of the pre-marital investigation with the request for the *Litterae Testimoniales* or *Nihil Obstat.* It gives the status of the parties as ascertained through the investigation, an inventory of the documents which prove the freedom of the parties, and confirmation of the publication or omission of the banns. The *Nihil Obstat,* in the form of the seal and signature of the Ordinary or his delegate, may be affixed to the Transcript in a space reserved for it.

[14] Instruction, n. 4, *AAS,* XXXIII (1941), 299.

This Transcript is also to be used by the pastor when a marriage is to be contracted outside his parish, in granting permission [15] to a priest otherwise vested with ordinary power.[16] The need of care and exactitude in following Canon Law in delegating a priest to assist is urged by the Instruction. The fact of such delegation and the priest delegated should be noted on the Transcript.

Commentary

There is considerable latitude in deciding the pastor responsible for the pre-marital investigation. In order to avoid negligence in this important duty, the Sacred Congregation demands a *Nihil Obstat* in the marriage between parties of different dioceses. Such marriages are most likely to suffer from negligence.

At least in this matter of the *Litterae Testimoniales* and *Nihil Obstat* of the Ordinary, which are the most notable features of the Instruction, uniformity throughout the country would be most helpful. It is to be noted that the Instruction only makes the *Nihil Obstat* obligatory when the parties belong to different dioceses. It declares the *Nihil Obstat desirable* when they are of different parishes within the same diocese. In this case the documents may be exchanged directly between the pastors, unless the Ordinary has ordered that the *Nihil Obstat* be obtained in this case also.

First Case: When the pastor of the bride, for example, belongs to the Boston Archdiocese and the pastor of the groom to the Springfield diocese, and the wedding is to take place in Boston, the procedure is as follows: The groom's pastor sends his dossier of documents to the Springfield Curia which attaches its testimonial thereto. The documents thus endorsed are sent from the Springfield Chancery to the bride's pastor in the Archdiocese of Boston, who then sends all the documents pertaining to both parties to the Boston Curia. The Boston Curia after examining the documents gives a *Nihil Obstat* to the Boston pastor.

Second Case: When the bride belongs to the Boston Archdiocese and the groom to the Springfield diocese, and the wedding is to take place in the Worcester diocese, the following procedure is followed: Since the Instruction demands that the parish priest who assists at a marriage in which the parties are of different dioceses obtain the *Nihil Obstat* of his own Curia, the documents of both parties, en-

[15] Can. 1097, § 1, 3°.

[16] Can. 1095.

dorsed with the curial testimonial of Boston and Springfield, must be sent to the Curia of Worcester for a *Nihil Obstat.*

Third Case: When both bride and groom belong to one and the same diocese, for example, Springfield, but are to be married in a different diocese, for example, in the Boston Archdiocese, the Instruction does not explicitly cover the case. It might, therefore, be held that no *Nihil Obstat* is required. It would certainly seem to fulfill the spirit of the law more faithfully, however, to require the *Nihil Obstat* of Boston where the marriage is to take place.

Fourth Case: When the groom is from one diocese, Springfield, and the bride from another, Boston, and they have obtained a month's previous residence in a third diocese, Worcester, where they plan to be married, the situation resolves itself. No *Nihil Obstat* is required by the Instruction alone since the parties, belong by title of a month's residence to a Worcester parish priest, presupposing they are not persons of no abode and are not immigrants.

The question whether *all marriages* should be sent to the proper Curia for a *Nihil Obstat* or only *those requiring a dispensation* of some kind or *only those between two parties of different dioceses,* is a good subject for discussion. Several dioceses demand that all marriages be so certified and report good results without too great difficulties. Some require the *Nihil Obstat* for inter-diocesan marriages and for cases in which a dispensation is requested, or in which one or both of the parties is a minor. The majority follow the Instruction literally and *require* it only for inter-diocesan marriages. In my humble opinion, the second is the most practical for our country. That is to *require* the *Nihil Obstat* in cases 1) of inter-diocesan marriages; 2) in which a dispensation is required; 3) in which a minor or *vagus* is concerned or 4) whenever doubt remains after the investigation regarding the freedom to marry. I repeat—this is a matter in which it is very much to be desired that there be uniformity as far as possible by Episcopal mandate among the dioceses of the country and I respectfully suggest that it is a subject for your considered discussion.

Part II. Special Directive regarding the Investigation.[17]

This is based upon Canon 1020, paragraph 2. " The pastor shall ask the groom and bride, separately and prudently, whether they are under any impediment, whether they are giving their consent freely, especially the woman, and whether they are sufficiently in-

[17] Instruction, nn. 5-10, *AAS,* XXXIII (1941), 302, sq.

structed in Christian Doctrine unless the quality of the persons makes this question unnecessary."

Aritcle 1. Special Directives regarding investigation concerning the absence of impediments.[18]

The pastors should instruct the faithful under their care regarding marriage impediments. They should urge them to avoid marriages within the forbidden degrees. They should also remind them to petition a dispensation when there are special reasons for such unions.

Any difficulty in seeking documentary proof of freedom to marry can be met by applying for such proof through the diocesan Chanceries of the parties. If in spite of every precaution, the pastor of baptism, upon receiving notice of the marriage, finds that either party is already bound by another marriage, he shall notify at once, through the Chancery, the pastor of the unlawfully attempted marriage.

The invalidity of a previous marriage must be established according to canonical procedure alone and the proper judicial process must be observed.

Commentary

a. The Instruction refers to two impediments at length. The first impediment with which the Congregation is thus concerned is multiple consanguinity or affinity, namely, when there is more than one common stock,[19] or when a person has married successively a deceased partner's relatives.[20] Because of the puzzling nature of such a multiple impediment the Instruction requires a genealogical tree to be sent with the petition to the Apostolic See. Many diocesan questionnaires include an outline for such a tree. This is a help to both pastor and Curia.

The second impediment, given even greater importance in the Instruction, is the bond of an existing marriage.[21] Whenever it is claimed that a previous marriage has been dissolved by death or other means, or declared null and void by the Matrimonial Tribunal, conclusive proof of this fact must be obtained by the pastor

[18] Cans. 1058-1080.

[19] Can. 1076, § 2.

[20] Can. 1077, § 2.

[21] Can. 1069.

and included with the other documents pertaining to the marriage. This conclusive proof would be an authentic certificate of death of the other party, an authentic decree of the dissolution or declaration of nullity of the previous marriage, or a notation on the baptismal record of the fact of death or dissolution or declaration of nullity.

With regard to the investigation of the possible presence of other impediments, a simple enumeration of the impediments with a general question asking the party whether he or she is aware of being bound by any one of them, is not wholly satisfactory. The parties, of course, rarely understand the meaning of the impediments cited, and it could happen, *salva reverentia,* a pastor might have a lapse of memory regarding the full meaning of certain impediments (Crimen, Public Decency, Vows) and not realize the need of looking up the proper Canons.

To remove this difficulty, and to assist the one asking the questions, many dioceses have made up questionnaires containing clear and simple wording of the questions regarding the impediments.

As a means of discovering an impediment the Instruction is definite with regard to the publication of the banns [22] in any parish in which the parties have domicile or quasi domicile and in the place of actual dwelling for persons of no fixed abode. It is left to the Ordinary to decide whether banns must be published in those places where the parties have lived for at least six months after puberty.[23] Some questionnaires solve this problem *in a practical way* by asking for the names of two witnesses known to their pastor who can testify about these periods of six months' residence after puberty.

b. Canon 201 requires that the persons dispensed be at the time, subjects of the dispensing Ordinary by having in his diocese a domicile, or quasi domicile, or in the case of *vagi,* by actually living there. If the parties have more than one Ordinary, the petition should go to the Ordinary of their actual residence, and to the bride's Ordinary, unless she is a non-Catholic or the impediment affects the groom alone.

The Instruction lays particular stress on the need of a canonical reason. For the validity of a dispensation from impediments of major degree [24] there is required a reason really existing in the case and proportionate to the gravity of the impediment. Since in prac-

[22] Can. 1022, sq.

[23] Can. 1023, § 2.

[24] Can. 1042.

tice a number of lesser causes is cumulatively the equivalent of a grave cause, pastors should be instructed to mention several existing causes in the dispensation petition.

In a case where the only final cause is false, whether alleged in good or bad faith, the dispensation of a *minor* impediment is still valid.[25] The minor impediments are consanguinity in the third degree collateral, affinity in the second degree collateral, public propriety in the second degree, spiritual relationship, and crime of the first species.[26]

Article 2. The Investigation regarding *freedom of consent.*[27]

a. *Freedom of consent.* The pastor must be assured that the parties, particularly the bride, are marrying of their own free will, especially where the marriage seems to be an escape from a civil penalty. The Instruction calls attention to the fact that one of the foremost causes of invalid marriages is force and fear.[28]

b. *Conditioned consent.* Care should be taken to discover any condition or reservation on the part of either or both parties with regard to their consent.[29] If the parties are entering marriage with an illicit condition, or if the condition is licit but the means of verifying it are unlawful, the pastor shall insist that the condition be retracted or forbid the marriage. This retraction of an illicit condition must be noted in the records of the marriage. If the condition is licit, the pastor must consult the Ordinary and obey his decision.

Commentary

The greatest threat to marriage in our times is found in restrictions, pacts, or conditions, directed against the primary purpose of the marriage contract (*bonum prolis*), or against its essential properties of unity (*bonum fidei*) and indissolubility (*bonum sacramenti*). The Instruction, *Sacrosanctum,* gives clear and definite directions with regard to these restrictions. If present they must be retracted or the marriage must be forbidden.

These conditions are due often to ignorance on the part of the bride and groom. In order to dispel this ignorance before proceed-

[25] Can. 1054.

[26] Can. 1042.

[27] Cans. 1081-1087.

[28] Instruction (1941), n. 7, *AAS,* XXXIII (1941), 304.

[29] Instruction (1941), n. 9, *AAS,* XXXIII (1941), 304.

ing with the questions regarding consent, the pastor should see that the parties are adequately instructed in the purpose and properties of marriage.

In order to assist the pastor, the official questionnaire should be just as simple and clear in this matter of true consent as it should be in the seeking out of possible impediments. One may argue that such questions are idle and useless. One may say an ill-disposed person determined to marry in the Catholic Church will agree externally with whatever the Church requires, while retaining his original evil intention. But one should be careful not to assume that the average man will lie. Even if he does lie, he will be impeded later on from seeking a decree of nullity on the grounds of a defective intention against the substance of marriage. His signed answers will prove an obstacle to such a nullity suit. Thus at least one of the purposes of the investigation in this matter will be attained.

With regard to the other element in consent, the freedom from force, little commentary is needed except to say that when there is any doubt in this matter, the pastor should require the sworn testimony of witnesses. This is one of the reasons why each of the parties should be interrogated *alone*.

Article 3. Investigation of sufficient knowledge.[30]

a. If the pastor finds that the parties are ignorant of Christian Doctrine, he should instruct them; but if they refuse to accept instruction, they are not to be deterred from the marriage.[31] This instruction is not to be confused with the instruction which concerns the *sanctity* and *obligation* of matrimony, which should be given to all who are entering marriage.[32]

b. The Instruction warns against negligence or carelessness on the part of the pastor with regard to the proper delegation of the priest who performs the marriage and observance of the canonical form with regard to the witnesses.[33] To avoid such neglect or carelessness most diocesan forms have a reminder with regard to any necessary delegation and a question requesting the names of those who are to witness the marriage.

[30] Can. 1020, § 2.

[31] Can. 1066; Pont. Com. Cod. Int., 3 Jun. 1918, IV, 3, *AAS*, X (1918), 345; Instruction, n. 8, *AAS*, XXXIII (1941), 304.

[32] Can. 1033.

[33] Instruction, n. 10, *AAS*, XXXIII (1941), 305.

c. The Final Directive to the pastors requires that they take great care to see that all marriages are entered immediately in the marriage register and notation made in the baptismal registers.

Commentary

Many Ordinaries demand that from three to six instructions on the sanctity and obligations of matrimony be given to all couples before marriage either separately or in Cana groups. Some Ordinaries furnish an outline of these instructions for the guidance of their priests. (A small but good book on this is "Marriage" by Von Strong-Bruehl.)

The Instruction does not explicitly state where all the pre-marital documents for a given marriage are to be kept. It does, however, imply that they are to be kept in the permanent file of the parish where the marriage took place. In giving directions about the notification of a marriage, the Instruction orders the pastor of the parish where the marriage took place to take great care to obtain certification from the pastor of the place of baptism that the marriage was noted in the baptismal register. The Instruction further directs him to "*bind them with the other documents pertaining to the marriage.*" [34]

A practical method of filing is to enclose the questionnaires and other documents pertaining to each marriage in separate envelopes or folders suitably inscribed for ready access, if needed.

Part III. Special Directives for the Most Reverend Ordinaries.[35]

This is based on Canon 1020, paragraph 3. "To the Ordinary of the place it pertains to issue special rules for this pastoral investigation."

In addition to the general supervision of the fulfillment of the Instruction, the Ordinaries are directed to enforce the following regulations with regard to the proper recording, notification and inspection of the records.

a. The proper recording and notification.

1. The civil authorities should be notified of a marriage when such notice is required.

2. The officiating pastor, besides entering a marriage in his marriage register, should also record it in his baptismal register, or

[34] Instruction, n. 11b, *AAS*, XXXIII (1941), 305.

[35] Instruction, nn. 11, 12, *AAS*, XXXIII (1941), 305, 306.

notify as soon as possible the pastor of the place of baptism, and require him to remit a certified notice that the marriage has been entered in his baptismal register. This certification must be filed with the documents of the marriage.

3. A declaration of nullity, or an apostolic dispensation from non-consummated marriage with any prohibition of future marriage decreed therein, should be sent as soon as possible to the pastor in whose register the marriage was entered, so that these may be inserted in the marriage and baptismal registers. If the baptism were elsewhere, the same pastor must notify the pastor of the place of baptism, and inform his own Ordinary immediately that he has fulfilled these requirements.

4. Baptism should be recorded not only in the register of the Church of Baptism but also in the parish register of the place of origin.[36] Hence the pastor of the church of baptism should send as soon as possible to the pastor of the place of origin all the items required [37] (names of godparents, priest baptizing, date and place of baptism).

b. The regular inspection of the marriage and baptismal registers.

1. The marriage and baptismal registers should be inspected every six months, or at least annually by the Ordinary or his delegate. Each entry should be checked with some relevant mark. Where it appears delegation was necessary,[38] inquiry should be made whether the delegation was granted according to law.

2. Ordinaries shall record in the Annual Report on marriage cases their observance of this Instruction, and refer in particular to the fact that the inspection of the marriage files was made as prescribed.

Finally, the Ordinaries shall enforce the fulfillment of Canon Law and these regulations of the Instruction even with canonical penalties, if need be.[39]

Commentary

It is the obligation of the Ordinaries to see that, in addition to the other forms required, a proper form, for the notification of a marriage and the remittance of a certified notice that the marriage

[36] Can. 90.

[37] Can. 777.

[38] Can. 1094.

[39] Can. 2383.

has been entered in the baptismal register, be provided the parish priests.

In some dioceses where it is not required by the Ordinary that every marriage be submitted for the *Nihil Obstat*, space for the "*Visum*" of the priest delegated to inspect the registers is provided on the questionnaire or on the envelope in which the records of a particular case are to be kept in the parish where the marriage took place. This check and signature by the priest delegate although post-factum is designed to serve as an added incentive for the exact fulfillment of the Instruction.

In some dioceses, the District Deans take care of this inspection. This would seem to be quite a burden in some districts where there is a large number of marriages. Wherever necessary the Deans could be assigned other priests to assist. They are asked to make the check and their report for the year in December. The report should list for each parish the number of marriage records inspected and include a brief word regarding the fulfillment of the Instruction in each parish. It should be the responsibility of the priest-inspector to list any defect found.

Conclusion

In concluding this paper, we respectfully request that you consider the advisability of selecting a committee to study further the matter of uniformity in pre-marital investigation. Our idea would be, to place the recommendations of this Committee before the Hierarchy at their next annual meeting in Washington. The obviously beneficial effect of uniformity in Lenten Regulations recommended by this Society in the past, encourages us to hope that a similar recommendation would be productive of like results in the present.

This uniformity is especially to be desired with regard to the question of the Testimonial, of the *Nihil Obstat*, and the other regulations requiring cooperation between the dioceses. It definitely would be very helpful to the dioceses of this country as a whole, if an opportunity were afforded to obtain uniform practical forms for the questionnaire, the transcript, the testimony of witnesses, the notification and certification of banns, etc.

Perhaps we could hope that the Bishops would decide to send out a joint mandate on this matter—as did the Bishops of the Province of Quebec. This would certainly be an excellent way to revive

appreciation of the *gravity* of this obligation, and realize in a *practical way*, the Canon Law of the Church and the purpose of the Instruction of the Holy See on Pre-marital Investigation.

APPENDIX

Explanation of the Sample Forms for the Pre-Marital Investigation

Form M-1

This is the general questionnaire for the bride and groom. It is made up in such a way that the same Form can be used for either party. It was found impossible without crowding things too much or eliminating questions which might be very important in a given marriage to use anything less than a four page folder. Since there is some extra space on such a folder the questionnaire is made more attractive to the priest by leaving the front page fairly free. It also allows for the addition of the Suppletory Oath on the same questionnaire thus eliminating another form for cases in which it is necessary to have this Oath.

The heavy print which forms the various headings for the different questions and the heavy print on the margin not only show the purpose of the various questions but also enable the Priest making the investigation, to find at a glance any particular answer. In the lower left hand corner of the last page is a space left for the *Visum*.

Form M-2

This form is for cases demanding more conclusive evidence concerning the Baptism, First Holy Communion, Confirmation, Free Status of the Parties, or the attitude of the parents when either party is under 21 years of age. For the convenience of the priest investigating, a form is found on the first page of this folder for the letter requesting the particular information desired.

Form M-3

This questionnaire is used in obtaining the consent and opinion of parents of party or parties under 21 years of age and also provides for the opinion of the priest making the investigation as to the advisability of the marriage.

Form M-4

This form is a request for the publication of Banns and the statement of the *status liber* and notification that the Banns have been published and the results of any investigation requested.

Form M-5

This form is for the notification of the pastor of the place of Baptism and acknowledgement from that pastor. This form is made in such a way as to contain the notification and acknowledgement both for parish of the Baptism of the groom and the parish of the bride.

Form M-6—Transcript

This form also is made up according to the directions contained in the Instruction and contains on the reverse side for the convenience of the priest investigating, the petition for testimonial letter and the *Nihil Obstat*.

Envelope

The Envelope is an aid for filing all the papers pertaining to a marriage with the name of the bride and groom at the top of the front together with space for the signature of the diocesan inspector of the records. The information to be filled in on the front of the envelope will enable the pastor to see at a glance whether or not everything is ready for the marriage. In the block on the left hand side, is a space for the pertinent data relative to the marriage. On the right hand side is a space for notation of the documents enclosed.

On the reverse is a summary of the different forms made up from the Instruction of the S. Congregation of the Sacraments and a guide for the pastor in making the pre-marital investigation and in using the various forms. This summary and guide is placed on the reverse side of every Envelope for the convenience of the Pastor.

Conclusion

The objection is frequently raised at first that these forms are too long or too complicated or too lengthy or that there are too many forms. These forms are required to fulfill the regulations of the Instruction of the Sacred Congregation. Practical experience in the marriage Tribunal shows their great need today. Finally, if their need and obligation is explained at the time of their introduction a brief experience with their use will usually demonstrate to the pastor's satisfaction that they are designed not only to obtain the necessary information but also to lighten his burden in the investigation.

Several of the Forms (M-2, M-3 and M-6) are used only in certain special cases. They are not needed in all marriages. The guide on the Envelope instructs the priest investigating as to their use. Every so often a case arises in which these questionnaires are required. Once the Pastors and the other priests in the parishes realize their need and their use for these special cases, they are recognized as practical aids to the investigation rather than additional examples of red tape. They fulfill the requirements of the Instruction and make certain that everything possible is done to assure a valid contract.

Form M-1

PRE-MARITAL INVESTIGATION

DIOCESE OF SPRINGFIELD

76 Elliot Street, Springfield, Massachusetts

Church of ..... Place .....

(Each party must be interviewed separately and alone. It is the duty of the pastor to see that the party is sufficiently instructed regarding the nature, sanctity and obligations of marriage.)

QUESTIONNAIRE

FOR

..... (Bride or Groom) ..... Street, City, State

Who wishes to marry

..... (Groom or Bride) ..... Street, City, State

Date of Marriage ..... Hour .....

IDENTIFICATION

Party must prove identity if not known to Pastor, (e.g., Driver's license, Social Security card, etc.)

Means of Identification? .....

OATH

(The priest must first remind the party of the sanctity of an oath before proceeding with the following questions.)

With your hand on this Holy Bible and calling God to witness the truth of your statements, do you solemnly swear to tell the whole truth and nothing but the truth in answering all the following questions? .....

GENERAL INFORMATION

1) Your full name? ..... Present address? .....
..... How long have you lived at your present address? .....
2) Your religion? ..... Your parish? .....
(A person in Military Service must state the parish to which he belonged at the time he entered Service, and present a letter of freedom to marry from his Chaplain or Commanding Officer.)
3) Your father's name? ..... Mother's maiden name? .....
Address? ..... Address? .....
Religion? ..... Religion? .....
4) Date of your birth? ..... Place? .....
5) Your occupation? .....

BAPTISM AND RELIGIOUS EDUCATION

6) Church, place and date of baptism? .....

Baptism

Proof: a) Certificate? (issued within 6 months) .....
b) Affidavits? If certificate *cannot* be obtained, give name and address of two persons who can testify to your baptism and freedom to marry.
1) .....
2) .....

7) Are you faithful in the practice of your religion? .....
(a and b are to be asked only if a Catholic party answers in the negative.)

Lapsed Catholic

a) Have you ever publicly and formally rejected the Catholic Faith? .....

b) Having once been a Catholic, has your fiance ever publicly and formally rejected the Catholic Faith? .....

(If answer to a or b is affirmative, Chancery must be consulted)

Were you brought up a Catholic? .....

Religious Education

Did you receive a Catholic education? .....
Where and for how long? .....
Do you understand the Catholic teaching with regard to marriage as a divinely instituted contract by which a man and a woman bind themselves until death in an exclusive union, the first purpose of which is the begetting and education of children? .....

8) Did you make your First Holy Communion? .....
When and where? .....
(Remind party to go to Confession and receive Holy Communion for the marriage.)

Confirmation

9) Did you receive Confirmation? ..... When and where? .....
.....
(If not, remind of obligation to do so before marriage, if it can be done without grave inconvenience.)

Forbidden Societies

10) (For groom) Did you ever join any of the following societies: Freemasons, DeMolay, Knights Templars, Odd Fellows, Knights of Pythias, Sons of Temperance, Independent Order of Good Templars, Communist party or an atheistic society? .....
.....

(If so, Chancery must be consulted)

(For bride) Did you ever join the Eastern Stars, Rainbow Girls, Rebekahs, Pythian Sisters, the Communist party of an atheistic society?
.....

(If so, Chancery must be consulted)

Residence

11) In what parishes, (if non-Catholic, in what places), have you lived for six months or more after the age of 14 (groom)?—(12 for bride)? Give location, dates. ....
....
....
....

Witnesses to Free Status

Give name and address of two (2) witnesses known to a priest who can testify about you during your stay in these parishes (or places).

1) .....
2) .....

(Affidavits of these witnesses must be obtained using Form M-2 and kept in the permanent file.)

FREEDOM FROM IMPEDIMENTS

12) Have you ever married or attempted marriage civilly? .....
How often? ..... With whom? .....
.....

Before whom? Priest ☐ Minister ☐ Civil Magistrate ☐
When? ..... Where? .....

Ligamen Is this party (parties) dead? ..... (If so, authentic document of death must be produced) .....
(date of death)

Was your marriage dissolved or declared null by the Church? .....
(If so, authentic document must be produced) .....
(Place and date of Decree)

Has your fiance * ever been married in any way? .....

* ("Fiance" will be used to designate the other party (bride or groom) in this questionnaire.)

If so, how many times? ..... How and to whom? .....
.....

13) Crimen. To be asked *only* if the groom or bride had a previous *valid* marriage.

Crimen
a) While the valid bond existed, did you attempt marriage with your fiance? .....
b) While the valid bond existed, was there a mutual promise of marriage? .....
c) Were you or your fiance responsible in any way for the death of the other spouse? .....

14) Are you related to your fiance,

Consanguinity a) by blood, (cousin, etc.)? ..... relationship? .....
Affinity b) by marriage, (in-laws)? ..... relationship? .....
Public Honesty c) by invalid marriage, (in-laws)? .... relationship? .....
d) Have you baptized or been sponsor in baptism for your fiance?
.....
(Explain)

(If related, use Genealogical Tree to describe. Give names if possible.)

Spiritual Relationship

N. .....

GROOM'S ANCESTRY	(Common Ancestry)	BRIDE'S ANCESTRY	
1°N.	.....	1°N.	.....
2°N.	.....	2°N.	.....
3°N.	.....	3°N.	.....

Explanation .....

15) A vow is a deliberate and free promise made to God with the intention of being bound thereby. Have you ever made a vow of any kind either **Vows** privately or publicly? ..... (Only if the answer is "Yes" should the priest ask the following questions.)

Have you ever made a vow a) of never marrying? .....
b) of becoming a priest? ..... c) of entering religious life? ....
d) of virginity? ..... e) of perfect chastity? .....

Sacred Orders 16) Have you ever received Sacred Orders? .....

Mixed Religion Have you ever made a profession in any Religious Institute? .....

17) What is the religion of your fiance? .....

Disparity of Cult Has your fiance ever been baptized? .....
If so, in what religion? .....

Impotence 18) Are you aware of any physical defect that would prevent you from performing the marriage act? .....

FREEDOM FROM COERCION

Force and Fear 19) How long have you known your fiance? .....
Are you entering this marriage of your own free will, without being forced by any one, in any way, whether physically or morally? .....
Abduction Is your fiance? .....

TRUE CONSENT

20) Have you ever been a patient in a hospital for mental or nervous illness? .....
Amentia Have you ever been treated by a doctor for mental or nervous illness? .....
If answer is affirmative please give details: .....
.....

Bonum Sacramenti 21) Do you intend to enter a permanent marriage that can be dissolved only by death? .....

Bonum Fidei 22) Do you intend to be faithful to your spouse always? .....

23) Do you understand the object of marriage to be the begetting of children, God willing? .....
Bonum Prolis Do you accept and propose to fulfill this obligation? .....
Does your fiance accept and propose to fulfill the same? .....
Do you know that the use of means or methods of frustrating the purpose of marital relations is sinful? .....
Have you or your fiance the intention of denying to the other the right to true marital intercourse and the natural consequences thereof? .....

Conditions 24) Have you or your fiance made any conditions or reservations concerning marriage or marital relations? .....
If so, what? .....
.....
(If the party has any condition or reservation concerning the marriage, an effort must be made to obtain a retraction and the retraction of the condition must be noted on this questionnaire. If the party persists, the case must be referred to the Chancery.)

CONSENT OF PARENTS—WITNESSES

Minors 25) (For minors) Have your parents any objection to this marraige? .....
If so, what? .....
(In case of Minors (under 21) consent of parents should be obtained (form M-3.)

Witnesses 26) Who are the proposed witnesses to your marriage?
1) .....
2) .....
Are they Catholic? .....
(If not, each case must be referred to the Ordinary)

27) Have you obtained a civil license? .....

OATH

28) Do you now swear that you have told the truth, the whole truth and nothing but the truth in all your answers given above? .....

.....
Signature of Groom or Bride

SUPPLETORY OATH

(When *all other* means of proving freedom to marry have been tried and found to be inconclusive, the following suppletory oath may be used.)

I, ... fully conscious
(groom or bride)

of my obligation to tell the truth and of the importance of this matter, and unable to adduce further testimony to establish my freedom to marry validly and licitly, do hereby affirm and swear with my hand on the Holy Scripture that, at this time, I am absolutely free of any impediment to matrimony and free of any bond of matrimony".

.....
Signature

CHURCH
SEAL

.....
Witness

.....
date

I, the undersigned pastor (assistant), do hereby attest: that the person whose signature is affixed above appeared before me personally on the ..... day of ..... in the year .....; that I proposed all the above questions to him (her) under oath and wrote in his (her) answers; *that no one else was present during the questioning;* that I am satisfied as to his (her) identity; that in my judgment there is no suspicion of untruthfulness or subterfuge on his (her) part; *that I have on file all necessary documents;* i.e., records of Baptism, Confirmation, death, declaration of nullity, affidavits, etc., that I have instructed him (her) according to the provisions of Canon 1033.

.....
date

.....
place

.....
Signature of the Pastor (Assistant)

(If deposition is taken outside the Diocese of Springfield it must be approved by the Chancery Office where the witness resides)

Visum est: .....
Cancellarius

Date, place: .....

(Seal of Chancery)

Form M-2

DIOCESE OF SPRINGFIELD

76 Elliot Street, Springfield, Massachusetts

AFFIDAVIT CONCERNING THE BAPTISM, CONFIRMATION AND (OR) FREE STATUS OF

..... (Name of party concerning whom testimony is requested)

Reverend .....

..... (Church)

..... (Place)

Dear Reverend Father:

The required pre-matrimonial investigation for ..... desiring to marry ....., demands more conclusive evidence concerning,

☐ the Baptism; ☐ the First Holy Communion; ☐ the Confirmation; ☐ the free status of this party; ☐ the attitude of parents.

Would you kindly interrogate under oath

..... of ..... (Street)

..... (City—State) ..... (Parish)

Please ask all of the General Questions and also the questions specifically referring to ....., and kindly return this form to the undersigned.

Sincerely yours in Christ,

.....

.....

.....

.....

GENERAL QUESTIONS

1. Has anyone sought to persuade you that you might be induced to give favorable testimony in this matter concerning which you are to be questioned? ..... Who tried to persuade you? .....
   In what did this persuasion consist? .....
2. Do you believe in the sanctity of an oath? .....

3. (Touching the Gospels) Do you solemnly swear to tell the whole truth and nothing but the truth in answering the following questions? .....
4. Your name? ..... Address? .....
   Parish? ..... Date and place of birth? .....
   Parents' names? .....
   (Father's Name) (Mother's Maiden Name)
   Your religion? ..... Do you practice this religion faithfully? .....
5. What is your relationship to the person whose name appears above? .....
   For how long and how well have you known this person? .....
6. What is the full name of the person whose name appears above? .....
   .....
   Address? .....
   For how long has this person resided at this address? .....
7. Whom is the above mentioned person marrying? .....
   Do you know of any impediment binding this other party? .....
8. Do you know of any reason why the above mentioned party should not marry? .....

PARTICULAR QUESTIONS

A—Regarding Baptism

9. Was the above mentioned person ever baptized? .....
   In what religion? .....
   When? ..... In what church and place? .....
   By whom? ..... Who were the sponsors? .....
   .....Were you present? ..... If not, how do you know of the Baptism? .....
   What religion does this person practice at present? .....

B—Regarding First Holy Communion

10. Did the above mentioned person receive First Holy Communion? .....
    When? ..... In what church? .....
    In what city? ..... How do you know this? .....
    ..... Was the above mentioned person instructed in the Catholic Religion? .....

C—Regarding Confirmation

11. Was the above mentioned person confirmed? ..... When? .....
    In what church and place? ..... Name of confirming Bishop? ..... Were you present? ..... If not, how do you know of the Confirmation? .....

D—Regarding Freedom to Marry

12. Are you sufficiently acquainted with the above mentioned person to be able to testify with certainty about the absence of anything that would stand in the way of a lawful and valid marriage? .....

13. Has the above mentioned person ever gone through a marriage ceremony before? .....How many times? ..... With whom? .....
Where? .....
When? ..... Before whom? .....
Have these marriages been declared null by the Church? .....
Explain .....

14. Is the above mentioned person related to the other party of this intended marriage by blood, by marriage or by spiritual relationship? .....
If so, explain .....

15. Was the above mentioned person ever treated at home or in a hospital for mental disturbance or illness? .....
If so, give details .....
.....

16. Are you aware of any physical defect that would prevent the above-mentioned person from fulfilling his (her) marital duties? .....

17. Do you know of any other reason (Sacred Orders, Vows, Religious Profession, etc.) why the above-mentioned person is not free to marry? .....

18. Is the above mentioned person entering this marriage freely and without compulsion of any kind? .....

19. Does the above mentioned person intend to enter a permanent, indissoluble marriage? .....
Does the above mentioned person intend to lead a married life in conformity with the primary purpose of marriage, i.e., the procreation and education of children? .....
Does the above mentioned person intend to be faithful for life to the partner in this marriage? .....
Have you heard the above mentioned person express any intention or condition regarding these or other matters? .....
What is the condition? .....

E—Regarding Attitude of Parents

20. Have the parents of the above mentioned person been consulted about this coming marriage? .....
Have the parents given their consent? ..... If not, why not? .....
.....

21. Have you anything else to say regarding the forthcoming marriage of the above mentioned person? .....
.....

I have read and I fully understand the above questions and answers and I solemnly swear that my answers are true and correct according to my knowledge and belief.

.....
Witness

Sworn to and subscribed before me

.....
(Date)

....
(Parish) Pastor (Assistant)

.....
(City, State)

Pastor will please note whether or not the witness is known personally to him and give his judgment regarding the truthfulness and sincerity of the witness.

The Pastor should make use of TWO WITNESSES whose affidavits should be taken according to this Form (in whole or in part) in the following cases:

1. **As proof of the Baptism or Confirmation when these documents cannot be obtained.**
2. **Whenever the party has resided outside the present parish for six months or more after the age of 12 (girl) or 14 (boy); or has been in the Armed Forces; or is a vagus; or when the Pastor has any doubt whatsoever of the freedom to marry.**
3. **For every non-Catholic; or one who has been converted to the Faith within the past year.**
4. **To investigate attitude of parents; when either party is under twenty-one years of age.**

Witnesses must be known as reliable and must fill out this affidavit SEPARATELY. Parents usually are preferred as witnesses.

(This affidavit is to be kept as part of the permanent file in the parish where the marriage is contracted.)

Form M-3

DIOCESE OF SPRINGFIELD

QUESTIONNAIRE FOR PARENTS OF PARTY UNDER 21 YEARS OF AGE

(This deposition of parents or guardians should be carefully done and their aid enlisted to dissuade a couple from an imprudent or unstable union.)

The priest shall tell the parent the following: Mr./ Miss .....
..... a minor, has manifested the intention of marrying Miss/Mr. ..... (Catholic, non-Catholic) in a Catholic Church of the Diocese of Springfield, Massachusetts. The Church demands that both parents be consulted individually about their consent to the contemplated marriage. Wherefore, being well aware of the seriousness of this matter and of the sacredness of an oath, will you please place your hand

on the Holy Bible and call God to witness to the truth of your statements, in the following form:

"I, ..., swear before Almighty God to tell the truth and nothing but the truth in answering the questions which will be submitted to me. So help me God".

1. What is your full name? .....
2. Your address? .....
3. What religion do you profess? .....
4. How well do you practice your religion? .....
5. How are you related to .....
(Name of contracting party)
When was he (she) * born .....
6. Are you aware of his (her) intention to marry? .....
7. When were you informed? .....
8. How long has this couple known each other? .....
9. How long has this couple been keeping company with a view to marriage? .....
When did you become aware of this? .....
10. Did you approve of their company keeping with a view to marriage? .....
..... If not, why? .....
.....
11. Is this the first marriage of your son (daughter)? ..... If not, to whom was he (she) married before? .....
12. Is this the first marriage of .....?
(Name of other contracting party)
If not, to whom was he (she) married before? .....
How was he (she) married? .....
Does this marriage bond or civil union still exist? .....
If not, how did it cease? .....
13. Did your son (daughter) ever suffer any mental disturbances or receive treatment in a mental hospital or from a psychiatrist? .....
If so, please explain .....
14. Do you consider your son (daughter) physically able to enter marriage? .....
15. Is he (she) entering this marriage through fear of parents, relatives, or any third party? ..... Why do you say so? .....
16. Have you tried to persuade or dissuade him (her) to enter this marriage? ..... Why? .....
.....
17. Is there any reason why he (she) feels it necessary to marry at this time? .....

* Draw line through pronoun which does not apply.

18. Do you know any reason why your son (daughter) *should not* enter *this* marriage? .....
Why? .....
.....

19. Do you know any reason why your son (daughter) *could not* enter a true marriage (relationship, etc.)? .....

20. Do you fully approve of this marriage? .....
Why? .....
.....
.....

21. Are you willing to swear that your son (daughter) is freely giving his (her) consent to this marriage? .....

22. What preparation has this couple made for a future home? .....
.....

23. Do they realize that this marriage will be for life? .....
Why do you say so? .....

24. Have they been instructed concerning the sanctity, the indissolubility and the purpose of marriage? .....

25. Have you anything further to declare with reference to this marriage?
.....

.....
(Father) (Mother)

Subscribed and sworn to in my presence this ..... day of ....., 19....

At .....
(Parish) (City) (State)

Parish Seal

.....
(Pastor) or (Assistant)

Remarks: The priest who is to assist at the marriage should indicate what he believes about the contemplated marriage; he should give his own personal opinion about the contracting parties, etc. This opinion must be given, having in view the stability of the future union, the spiritual welfare and dispositions of the contractants as well as their ability to assume the responsibilities of marriage.

.....
.....
.....
.....
.....
.....

.....
(Pastor) or (Assistant)

....
(Date) (Address)

Form M-4

DIOCESE OF SPRINGFIELD

REQUEST OF PUBLICATION OF BANNS
and
STATEMENT OF STATUS LIBER

I, ... Pastor of ..... Church ask, in connection with the marriage of ..... and ....., that:

1. Banns be announced on 1) ..... 2) ..... 3) .....
2. A search be made for possible impediment
   a) by examination of your baptismal register, under the name , in the years ;
   b) by examination of your marriage register, under the name , in the years ;
   c) if possible, by other local sources of information: the party lived in your parish from 19.... to 19...., on Street.

[SEAL]

..... Parish (*signed*) .....
Pastor

..... City .....
Address

..... Date

---------- [Perforation] ----------

DIOCESE OF SPRINGFIELD

I, the undersigned Pastor of ..... Church, certify:

1. Banns of marriage, as requested, were duly announced on 1) ..... 2) ..... 3) .....; and that no impediment was discovered.
2. No impediment was discovered:
   a) by search of the baptismal register
   b) by search of the marriage register
   c) by consultation of local information concerning ...., concerning his residence here during 19.... to 19.....

[SEAL]

..... Parish (*signed*) .....
Pastor

..... City .....
Address

..... Date

Note: Both the priest applying and the Pastor answering should cross out, under 2, any item which is not needed, or has not been verified.

Form M-5

DIOCESE OF SPRINGFIELD

Date .....

Dear Reverend Father:

In accordance with the prescriptions of Canon 470, § 2 (Canon 1103, § 2) and the Instruction of the Sacred Congregation of the Sacraments, June 29, 1941, I am sending you the information listed below for entry in your Baptismal Record. Please have the goodness to acknowledge receipt of this notice by signing and returning the attached stub to this church.

Name .....
Baptized in the Church of .....
City and State .....
Date .....

GROOM

Contracted Marriage with

Name .....
At the Church of .....
City and State .....
Date of Marriage .....
Priest .....
Address .....

---------- [Perforation] ----------

DIOCESE OF SPRINGFIELD

Date .....

Dear Reverend Father:

In accordance with the prescriptions of Canon 470, § 2 (Canon 1103, § 2) and the Instruction of the Sacred Congregation of the Sacraments, June 29, 1941, I am sending you the information listed below for entry in your Baptismal Record. Please have the goodness to acknowledge receipt of this notice by signing and returning the attached stub to this church.

Name .....
Baptized in the Church of .....
City and State .....
Date .....

BRIDE

Contracted Marriage with

Name .....
At the Church of .....
City and State .....
Date of Marriage .....
Priest .....
Address .....

Form M-5

DIOCESE OF SPRINGFIELD

Date .....

Dear Reverend Father:

I have received and duly recorded your notice that

Name .....

Baptized in this church on the

..... day of ..... 19 .....

GROOM

Contracted Marriage with

Name .....

At the Church of .....

City and State .....

Date of Marriage .....

Priest .....

Church .....

City and State .....

---------- [Perforation] ----------

DIOCESE OF SPRINGFIELD

Date .....

Dear Reverend Father:

I have received and duly recorded your notice that

Name .....

Baptized in this church on the

..... day of ..... 19 .....

BRIDE

Contracted Marriage with

Name .....

At the Church of .....

City and State .....

Date of Marriage .....

Priest .....

Church .....

City and State .....

Form M-6

DIOCESE OF SPRINGFIELD

Parish .....

Address .....

TRANSCRIPT

(To be sent to the Chancery with the pre-marital documents in requesting the Litterae Testimoniales or the Nihil Obstat)

GROOM	BRIDE .....
Address ..... (No., Street, City, State)	Address ..... (No., Street, City, State)
having domicile or dwelling in parish	having domicile or dwelling in parish .....
son of ..... (Father's Name)	daughter of ..... (Father's Name)
dwelling in ..... (City, State)	dwelling in ..... (City, State)
and ..... (Name and Maiden Name of Mother)	and ..... (Name and Maiden Name of Mother)
dwelling in ..... (City, State)	dwelling in ..... (City, State)
profession ..... (of Bridegroom)	profession ..... (of Bride)
born in ..... (City, State, Parish)	born in ..... (City, State, Parish)
diocese of	diocese of .....
date (of birth)	date (of birth) .....
baptized in parish	baptized in parish .....
diocese	diocese .....
date	date .....
confirmed: date	confirmed: date .....
place	place .....
widower from (date)	widow from (date) .....

The banns were published ..... (Date)

(or dispensed from) ..... (Date)

Dispensation requested from impediment (name of impediment (s) .....

.....

Dispensation granted: Place ..... day ..... month ..... year ....

Documents enclosed ..... (Enumerate)

(Directions regarding the Litterae Testimoniales or the Nihil Obstat, when necessary, are found on the reverse of the Envelope in which all the Documents pertaining to a marriage are to be permanently filed)

PETITION FOR TESTIMONIAL LETTER

Your Excellency:

I, the undersigned, after due investigation, hereby testify that .... of this Diocese is free to marry, and I humbly request that the Testimonial Letter with the enclosed documents be sent to the Rev. .....
(Name) (Parish) (Street) (City) (State)

Sincerely in Christ,

.....
(Pastor)

....
(Date) (Address)

TESTIMONIAL LETTER

In view of the investigation made and the information submitted to us, we hereby testify that the above party .....
of this Diocese is free to contract marriage.
Dated at ..... this ..... day of ..... 19 ....

By Mandate of the Most Reverend Bishop

.....
(Chancellor)

PETITION FOR NIHIL OBSTAT

Your Excellency:

The reasons for requesting a Nihil Obstat in this case are the following:
.....
.....

I, the undersigned, therefore humbly petition Your Excellency to grant a Nihil Obstat for the celebration of the marriage of
..... and .....

.....
(Pastor)

.....
(Parish)

....
(Date) (Address)

NIHIL OBSTAT

(Issued by the Ordinary of the Diocese in which the marriage is to be celebrated)

In consideration of the above petition and having reviewed the documents submitted to us, we hereby grant our Nihil Obstat to the celebration of the above marriage, servatis de jure adhuc servandis. All documents presented are returned herewith, to be kept on permanent file in the Archives of the parish where the marriage is celebrated.

By Mandate of the Most Reverend Bishop

.....
(Chancellor)

....
(Date) (Diocese)

ENVELOPE—FRONT

GROOM ..... (Last name) (First) (Middle)

BRIDE ..... (Last name) (First) (Middle)

Consulting Priest .....
Date of Marriage .....
Celebrant .....
Witnesses .....
.....
Hour ..... Mass .....
Instructed by .....
Rehearsal Date ..... Hour .....

PUBLICATION OF BANNS:
to be made here—Dates .....

Notices sent to	1 Date	2 Acknowledged	3
.....	.....		☐
.....	.....		☐
.....	.....		☐
.....	.....		☐

DISPENSATION OBTAINED FROM:
Publication of ..... Banns ☐
Impediment of ..... ☐
..... ☐

NOTIFICATION OF MARRIAGE SENT:

	Groom	Bride
Parish of Baptism of	☐	☐
Acknowledgement received from parish of	☐	☐

Delegation to assist at this marriage has been granted to

.....

Date: ..... Pastor .....

DIOCESAN INSPECTION

by: ..... Delegate of Bishop

..... Date

DIOCESE OF SPRINGFIELD

Church of .....

Place .....

DOCUMENTS ENCLOSED

	Groom	Bride
Interrogatory	☐	☐
Certificate of Baptism or affidavit ...	☐	☐
Certificate of Confirmation or affidavit	☐	☐
Dispensation Rescript	☐	☐
Testimonial letters of Chancery	☐	☐
Nihil Obstat of Chancery	☐	

..... Pastor

..... Date

GUIDE FOR THE PASTOR IN MAKING PRE-MARITAL INVESTIGATION

GENERAL DIRECTIONS:

1) The Pastor whose right it is to assist at the marriage has the obligation SUB GRAVI to conduct the investigation. This will normally be the Pastor of the bride. The Pastor of the groom, may of his own volition, and MUST at the request of the groom or the pastor of the bride likewise investigate the free state of the groom.

2) To assist in the investigation the following forms are provided:

a) Form M-1, Questionnaire for the bride and groom is to be used in all marriages except those in articulo vel periculo mortis. The suppletory oath found at the end of this questionnaire is to be administered to the parties whenever all other means of determining the freedom to marry have been explored and doubt remains.

b) Form M-2, Affidavit for the interrogation of witnesses to prove the freedom to marry of persons who have lived outside the parish of their present domicile for six months or more after puberty; who are vagi; or non-Catholic; or have been in the Armed Forces; or about whom the pastor has any doubt of the free state. It is also to be used to establish the fact of Baptism and Confirmation, when certificates ABSOLUTELY cannot be furnished.

c) Form M-3, Affidavit for parents or guardians when the bride or groom is under 21 years of age.

d) Form M-4, Notification and acknowledgement of banns.

e) Form M-5, Notification of a marriage to parishes of baptism of the parties and acknowledgement.

f) Form M-6, Transcript containing pertinent data regarding the marriage and a request for the Litterae Testimoniales or Nihil Obstat when required.

DIRECTIONS REGARDING LITTERAE TESTIMONIALES AND NIHIL OBSTAT:

1) Litterae Testimoniales (or certification of the free state of a party by his Diocesan Chancery), are required whenever one of your parishioners is being married in ANOTHER DIOCESE. Procedure is as follows: Complete the questionnaire (M-1) with your parishioner, and send it together with the baptismal and confirmation certificates and other proofs of freedom to marry, as well as the Transcript containing the request for testimonials, to the Springfield Chancery. The Springfield Chancery issues the Testimonial and sends it with all the documents to the extra-Diocesan pastor who is to perform the marriage.

2) A NIHIL OBSTAT (Authorization from the Chancery to proceed with the marriage) is required:

a) In the marriage of vagi, or when after full investigation doubt of free state remains.

b) Whenever a dispensation is required.

c) Whenever a Decree of Nullity for a previous marriage is required.

d) Whenever one of the parties is under 21 years of age.

Procedure for a, b, c, d, is as follows: Send all documents including any request for a dispensation or decree of nullity, together with the Transcript requesting a Nihil Obstat, to Springfield Chancery. They will be returned with the Nihil Obstat.

e) When one of the parties to be married in YOUR PARISH belongs to another diocese, send the questionnaire (Form M-1) for the extra-diocesan party directly to the proper pastor in the other diocese. After completion of questionnaire he sends it together with all documents proving free state of his subject, (baptismal record, etc.) to his Chancery. This extra-diocesan Chancery will send the documents with the Litterae Testimoniales to you. Upon receiving these documents you send them, together with the completed questionnaire and proof of free state of your subject and the transcript requesting a Nihil Obstat, to the Springfield Chancery. The Springfield Chancery after issuing the Nihil Obstat will return all the documents to you.

N. B.

All documents pertaining to the marriage (questionnaires, baptismal records, affidavits, litterae testimoniales from other dioceses, dispensation rescripts, etc.) should be placed in this envelope and carefully kept in the PERMANENT files of the parish where the marriage takes place. They must be made available to the competent Ecclesiastical Tribunal in the event that an action should be instituted against the validity of the marriage. In conformity with the Instructions of the Sacred Congregation, the Premarital Investigations will be inspected annually by a delegate of the Ordinary of the Diocese.

ENVELOPE—REVERSE

Decrees and Decisions

CANONICAL

ABSTINENCE RELAXED

In response to a petition sent in from various nations where the last day of the year is, by custom, a day of thanksgiving the Sacred Congregation of the Council, by a special mandate from the Sovereign Pontiff, dispensed all the faithful, wherever they might be, from the law of abstinence which otherwise would have bound them, since the last day of the year 1954 fell on a Friday.

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COMMISSION FOR MOVIES, RADIO, AND TELEVISION

The Holy See, in December 1954, established the Pontifical Commission for Movies, Radio, and Television, to be the organ for the study of the problems which pertain to Faith and Morals in these fields. The Commission has the function of following the doctrinal orientations and the practical attitudes of film production and radio and television transmission. It has, also, the function of directing the activity of Catholics and promoting the attainment of the directives given by the supreme ecclesiastical authority. It is at the service of the agencies of the Holy See and of the Bishops, to furnish information and to study questions proposed by them. In order to favor productions, broadcasts and telecasts which will be in conformity with the Christian spirit and to protect the faithful from those which would be morally harmful, the Commission keeps in touch with national Catholic centers dealing with films, radio, and television and with the appropriate international organizations, exchanging information, collaborating, and evaluating their activities. As a general rule the Commission abstains from publishing judgments on films, radio, or television programs, whether favorable or unfavorable, leaving this to the various national centers, established by the Hierarchy in the various countries.

The Commission consists of a President, whose term of office is six years, and a Presidential Council. The members of this Council

are divided into two groups, those who are members *ex officio* and those who are chosen by the Holy See. *Ex officio* members are: the Assessor of the Holy Office, the Assessor of the Sacred Consistorial Congregation, the Assessor of the Sacred Congregation for the Oriental Church, the Secretary of the Sacred Congregation of the Council, the Secretary of the Sacred Congregation for Religious, the Secretary of the Sacred Congregation of Propaganda, the Secretary of the Sacred Congregation for Seminaries and Universities, the Substitute of the Secretariate of State. The members of the second group, no more than four, are freely chosen by the Holy See. There is likewise an Executive Council, consisting of the President of the Commission, an Executive Secretary, and three or more Consultors, among whom is, *de iure*, the Director of the Vatican Radio, and a College of Experts, divided into three sections: movies, radio, television. The members of the Executive Council hold office for four years.

The Pontifical Commission for Movies, Radio and Television, which takes the place of the Pontifical Commission for Movies, has its principal office in Vatican City.

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NORMS AND FACULTIES

The Sacred Consistorial Congregation published on Dec. 10, 1954, the norms and faculties granted to priests who work for the spiritual care of migrants, i.e. to the migrants' missionaries and the directors of missionaries.

Durante munere, they have the privilege of the portable altar, to be exercised with the consent of the local ordinary, provided they are celebrating Mass for the faithful entrusted to them. They have also the faculty of celebrating *sub dio*, when they are saying Mass for their faithful, provided the place is decent and a tent is used to protect the altar from the wind, lest fragments be lost. They have, too, the faculty to say Mass two or even three times on Sundays, and Feast days of precept and on week-days for their people living in the territory of the mission, provided they have the consent of the local ordinary and the third Mass is said in a different church, if this can be done without grave inconvenience. It is on the conscience of the Director of the Missionaries to determine in each case as to the real need for the third Mass. All

admiration and danger of scandal must be avoided, and the celebrant cannot take a stipend for both Masses.

Granted, too, is the faculty of celebrating Midnight Mass on Christmas and on New Year's Eve, if the services last two hours, for their faithful. They can also say Mass on Thursday of Holy Week. With regard to the celebration of Mass in the evening they are to follow the rules laid down in the Constitution *Christus Dominus.*

They have also the faculty of blessing priestly vestments, altar linens, tabernacles and vessels to contain the Holy Eucharist, as well as others which serve for divine worship. They can bless, according to the prescribed rites, with all the indulgences customarily granted by the Holy See, rosaries, crosses, small statues and medals, and attach to rosaries the Brigittine and Crucifer indulgences.

Migrants can make their Easter duty at any time during the year. They can satisfy their obligation to hear Mass when the missionary says Mass on a portable altar and even when he says it *sub dio.* They can likewise gain the Portiuncula Indulgence *toties quoties* by visiting the oratory or chapel of the mission, where the Holy Eucharist is kept.

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SECULAR

ZONING ORDINANCE

A unanimous decision of the District Court of Appeal of the First Appellate District (Division 2) of the State of California recently declared unconstitutional a zoning ordinance which authorized public but not private schools in a residential zone A, and directed the issuance of a writ of mandate of the Building Inspector and Building Official requiring him to issue a permit for erection of an elementary school which had sought such a writ.

The famous Oregon School Case [*Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary,* 268 U. S. 510, (1925)] held that parents have the basic constitutional right to have their children educated in schools of their own choice, subject to reasonable regulations as to subjects required, manner of instruction, etc.

With this basic right in mind the Court of Appeal held that no reasonable ground for permitting public schools to be conducted in zone A and prohibiting all other schools teaching the same subjects to the same age groups could be suggested. In other words, no reasonable basis of classification existed between, or among, schools furnishing the same type of education to the same class of students.

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RELIGION PROVISO IN ADOPTIONS

The Supreme Court of the United States recently refused to interfere with a Massachusetts State ban on adoption of children by families of a different religion. The Massachusetts State Supreme Judicial Court had ruled that a State law prohibiting adoptions in cases in which the children had been born of parents who adhered to one religion and those who sought to adopt them were of a different religion did not violate either the equal protection clause of the Fourteenth Amendment or the First Amendment's provision concerning free exercise of religion. The Massachusetts Court, therefore, upheld a Probate Court denial of the request for permission to adopt, and the Supreme Court left untouched the State Supreme Judicial Court's decision.

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RELIGION IN ADOPTIONS

An Illinois county court has, likewise, recently held that a statute of that State which requires that the courts "shall whenever possible give custody through adoption to a petitioner or petitioners of the same religious belief as that of the child," does not allow the court to give children baptized Catholics to a non-Catholic petitioner.

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RELIGIOUS INSTRUCTION IN SCHOOLS

A ruling by the Attorney General of the State of Illinois holds that religious instruction classes may be conducted on Illinois public school premises before or after regular school hours, provided attendance at the classes is voluntary. The McCollum Case forbade the conduct of released-time religious instruction classes in the public schools during regular school hours.

The ruling also holds that religious readings, prayers, textbooks and symbols in a public school which induce an attitude of preference for one religious denomination are illegal. With the exception of articles in the accepted "works of art" category, the presence of objects or symbols of a sectarian nature, such as pictures, statues, posters and the like, used as furnishings or decorations, are illegal and improper in Illinois public schools if such objects intentionally exhort pupils to embrace a particular religion. The use of officially adopted textbooks and other teaching materials which in their effect upon pupils induce a preference for a particular religion is likewise illegal and improper.

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BUS RIDES

A bill entitling all children attending accredited schools to ride school buses has passed the Territorial Legislature of Alaska. A similar bill was defeated in the Vermont Senate, whereas the New Mexico Senate passed such a bill and sent it to the House.

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Book Reviews

THE AMERICAN LAWYER, a Summary of the Survey of the Legal Profession, by Albert P. Blaustein and Charles O. Porter. University of Chicago Press, Chicago, Illinois. Pp. 360. Price $5.50.

This useful volume opens with a question: "Who is the American Lawyer?" In less than two pages it gives a sparkling answer, well written and sparked with humor. Then immediately it brings the results of research studies by the Survey of the American Bar. It summarizes 175 distinct reports, which give immense amounts of information, factual as well as opinionative, as to the role of bench and bar in the American scene. The material is well-organized. The writing is direct, clear and forceful. A careful index is a useful guide to sections of special interest.

Readers of "The Jurist" will probably turn first to a chapter on "The Ethics of the Law". It deals with such questions as how to teach professional ethics, the extent of violation or neglect of professional codes by lawyers and by judges, methods of discipline, and the timely problem of so-called trial by jury. A considerable body of factual material is presented, together with general considerations and opposing arguments and viewpoints. It is cheering to note the predominance of high over lower ethical considerations and the zeal for self-improvement in the thoughts and writings of the civil bar.

✠ Eric F. MacKenzie

Boston, Mass.

JUSTICE. An Historical and Philosophical Essay by Giorgio del Vecchio: Edited with additional Notes by A. H. Campbell, Philosophical Library, New York, N. Y. Pp. xxi-236.

Professor Giorgio del Vecchio is an important person in European philosophical circles. Many of his works have been translated into European languages. The present work is translated into English for the first time. The entire English philosophical and legal world is indebted to the translator and to the publisher who made this admirable work available.

The concept of justice and its place in the affairs of man have occupied the attention of philosophers for centuries. Various theories have been developed and later discarded and even abandoned. Del Vecchio portrays these theories as they were supported by different schools. Thus an excellent review of the development of the concept of justice is afforded. Knowledge thus gained may not be helpful in determining the final estimate of justice but the cultural advantage gained is incalculable.

There are several chapters in this book which could be profitably displayed for examination and study. But since every review is limited in space, attention is called especially to the author's chapter on the formal notion and absolute requirements of justice. Other items are contained in this chapter but they are derived from the fundamental requirements of justice. It is in this chapter that the author stresses the idea of "person" in whom reside rights and who in turn must respect the rights of others. This respect concerns both rights in themselves and relationships between persons. Emphasis on this matter should in no wise be ignored or even minimized for these ideas are independent of positive legal measures and are valid in any situation in which persons exist or may be engaged.

The author discusses the State and the concrete aspects of justice. Ethics teaches the proper view to hold in these matters but the author expands these views to encompass all the relationships in which one may find himself relative to the State. This discussion is important and, while not new, is of immense social significance. Repetition cannot be made too frequently for it is through the light of scrutiny of the selfishness of men who assert their own rights and are unwilling to support the rights of others that deficiencies are discovered. Many problems, if not most, of political and social life could be solved by the exercise of justice in the personal and juridical relationships outlined by the author.

The work of Professor del Vecchio deserves the widest possible circulation. The sanity of its adherence to the fundamental and social aspects of life is welcome among the confusion of theories offered in conflicting systems.

The notes to the text of del Vecchio's work are in the themselves a contribution to the study of justice. Valuable additions have been made by Professor A. H. Campbell.

FOURTH DIOCESAN SYNOD OF LAFAYETTE, 1953. The Most Reverend Jules B. Jeanmard, D.D., Bishop of Lafayette, La.

The Most Reverend Ordinary of the Diocese of Lafayette, Louisiana has produced a series of synodal statutes which will repay study. He has had, of course, the counsel of competent canonists and the general result is satisfactory.

Several statutes could be mentioned as models of particular legislation. These refer to delegation to assist at marriage, the conditions under which a mixed marriage can be performed in church and the conditions under which the Ordinary will permit a petition for civil divorce. Legislation on schools and on the administration of ecclesiastical property could also be mentioned in this manner.

A general criticism of the statutes of this fourth synod of Lafayette rests upon the too frequent reference to the Code of Canon Law. Consequently, some synodal statutes are superfluous. Statutes regarding music in Church are in themselves correct enough but a few liturgical details are inaccurate. However, despite this criticism the synod should be productive of much good.

Various appendices are furnished. Some are purely of local and diocesan interest. Some are of more general interest. An example of the latter is a suitable and useful extract of the laws of Louisiana pertaining to marriage. A satisfactory index is provided.

INTRODUCTION TO THEOLOGY. Theology Library, Volume I under the Editorship of A. M. Henry, O.P. Translated by William Storey. Fides Publishers Association, Chicago, Ill., 1954. Pp. xiv-306.

There is a solid reason for drawing the attention of the readers of *The Jurist* to this book. It is the initial volume of a new series of studies in Theology and while it is, of course, brief in some parts it is of satisfactory detail in others.

This new theology library when fully translated and published will be a worth while addition to the apposite accessible works in the vernacular. The whole series will be based on the plan of St. Thomas. It is probable that most of the contributors will be Dominicans as is actually the case with the first volume.

This first volume contains chapters on the fundamentals of Sacred Scripture and Tradition. In this latter category, the Tradition of the Creeds, the Fathers and Doctors of the Church and Sacred Art is explained. Liturgy has a long separate chapter.

For graduate students in Canon Law there is little of value in the chapter entitled *Canon Law*. Seminarians and laymen, however, will find something upon which they can reflect. This is principally true of the basic force of Canon Law in the existence of the Church as a society.

There are three appendices the best of which is a discussion on the theological systems. A selected bibliography is provided at the end of each chapter. The index is serviceable.

ENCHIRIDION IURIS CANONICI. Concinnavit Stephanus Sipos. Editionem Sextam Recognovit Ladislaus Gálos. Orbis Catholicus, Herder, Romae, 1954. Pp. xix-913. Price Lire 5000.

The commentary of Professor Sipos is a standard work well known to students of Canon Law. The present edition is the sixth and is published by the author's successor in the chair of Canon Law, Professor Gálos.

The new edition of the *Enchiridion* naturally includes comment on the latest decrees, documents, etc. There is also included some matter relative to Oriental Law where the separate disciplines impinge on each other.

There is general satisfaction with this new edition. Although the text runs to over nine hundred pages, one must not expect extensive treatment of the whole Code of Canon Law. Further, as in earlier editions, commentary on the Sacraments of the Eucharist, Penance and Extreme Unction is deliberately omitted since in some Seminaries these Sacraments are considered in the courses of Pastoral Theology. This, in the opinion of the reviewer, is a mistake because the law of these Sacraments should properly be the subject of courses in Canon Law. Other aspects of these Sacraments can well be considered in Pastoral and Moral Theology.

Aside from the criticism, the *Enchiridion* is a suitable textbook. It deserves wide use.

There is no separate bibliography. The footnotes are abundant but the reviewer could discover no books or articles in English cited. There is a constantly growing canonical literature in this language

and it should not be ignored. Other European authors, such as Michiels and the late Van Hove, have suitably enriched their work by broadening their bibliography. The index covers more than forty pages and is excellent.

CANONICAL AND CIVIL STATUS OF PARISHES IN CANADA. The Reverend Peter Kinlin. Universitas Catholica Ottaviensis: Dissertationes ad Gradum: Series Canonica, Tomus 26. Ambrosi Printers, Regina, Sask. Pp. xii-302.

In recent years several dissertations have appeared dealing with parishes. Various canonical aspects of parishes have been investigated. To a considerable extent, principally in matters of history, repetition has been found in these dissertations. The latest, on the canonical status of parishes in Canada, is no exception. It is, however, none the less useful to have at hand an historical introduction while studying the actual canonical status of a parish.

Fr. Kinlin considers in detail the historical development of parishes in Canada. The statutes of provincial councils and local synods are carefully examined for any item which would establish and protect these parishes.

The canonical section of this dissertation begins with a study of the necessary conditions in Canon Law for the establishment of a parish. With these conditions are compared the actual status of Canadian parishes and the parishes are judged to possess canonical status. The next point considered is the notion of a benefice relative to a Canadian parish. Here the author with solid arguments maintains that these parishes are also benefices. There is really no challenge to the author's conclusion since the Holy See has said definitely that parishes are also benefices. There is a good deal of latitude now in the manner of supporting beneficiaries. The author argues for a clear choice among the methods permitted by the Code of Canon Law in canon 1410. Other commentators, however, say that property is the first choice for the support of beneficiaries. Any other choice is supplementary. In a few minor matters there are some inaccuracies in the canonical section of this dissertation.

Perhaps the best real contribution to the study of Canon Law made by the author is found in the section of his dissertation on the civil status of Canadian parishes. The laws of the various

Canadian provinces are examined to see where the preferred method of civil incorporation can be discovered. The recommendation of the Holy See in regard to parish incorporation is compared with the possibilities in Canadian law. The advantages and disadvantages of the several methods of incorporation are discussed.

The sources used by the author are considerable and indicate a wide knowledge of the particular legislation in Canada. The bibliography is sufficient but not extensive. The index is satisfactory.

LAW AND GOVERNMENT. The School Segregation Decision. James C. N. Paul. Institute of Government. The University of North Carolina, Chapel Hill, N. C., 1954. Pp. x-132.

No one will deny that one of the most historic decisions of the Supreme Court of the United States was issued May 17, 1954 relative to school segregation. This decision gave great comfort to a large segment of the population of this country but caused immediate dismay among whole States in the South. Unfavorable reaction was deep and bitter. The book under review discusses the problems of de-segregation and the prospects of its success as well as possible methods of meeting properly the ruling contained in the decision of the Supreme Court.

The author deserves every compliment on his calm, dispassionate treatment of a difficult subject. Since this book is in reality a report to the Governor of North Carolina, it should serve as a reliable guide in a situation which must be faced officially and by the citizens themselves in times when sentiments pro and con will be easily aroused.

Means of meeting and adapting the decision of the Supreme Court are adequately considered by the author. He indciates clearly where the various suggestions already made can possibly be realized and where these same suggestions will, if adopted, be ultimately declared unconstitutional. It is to the author's credit that he discusses openly the danger of fraud and the certainty of its disclosure. This alone should give pause to those who, at any cost, would thwart the meaning of the decision of the Supreme Court. The author openly espouses the rule of what has to be known as "gradualism". He rests his contention on the desire of the

Supreme Court to hear arguments from the States involved in the problem of de-segregated schools on how best to put into force the decision itself.

As an introductory section, Mr. Albert Coates, Director of the Institute of Government, writes an interesting background of the decision of the Supreme Court. This introduction traces the growth and progress of education among the Negroes in North Carolina. He pointedly indicates the shift of contention of the Negroes from equal opportunity to constitutional right of de-segregation. The book closes with the text of the decision of the Supreme Court relative to the State involved and the District of Columbia.

No student of this important, difficult and complex problem can afford not to read *Law and Government.*

EDWARD ROELKER

INVALIDATING LAWS by Edward Roelker, S.T.D., J.C.D., St. Anthony Guild Press, Paterson, New Jersey, 1955. Pp. ix-197.

The content of this volume, *Invalidating Laws*, and its scope are best described by presenting the subject matter of its chapter headings: concept of invalidating laws; division of this type of laws; the power to enact them; their interpretation; their effect and obligation; reasons alleged to excuse from their observance; identification of such laws; pleas based on the force of invalidating laws. The text of the treatise covers some 170 pages.

This work is not a textbook or commentary in the ordinary acceptation of the terms. It presents a logically arranged series of canonico-juristic tracts, the basic subject matter of which is canon 11 of the Code of Canon Law. In his Foreword the author correctly insists on the necessity of a thorough grasp of the historical antecedents of existing law. This approach is adhered to with expert exactitude throughout the treatment of his subject. The language is precise and clearly intelligible. In following his thought one incidentally derives instruction on how to proceed in juristic thinking. Notably, as a fundamental requisite, it is necessary to progress step by step, by observing the required distinctions and modifications in legal concepts. On this basis one may advance with a comprehensive grasp of the matter at hand in an orderly and incisive trend of thought to warranted conclusions and applications of law. Thus the discourses in this treatise invite attention to the

proper manner of handling legal materials for the purpose of their correct appreciation and use. There are many engrossing and important questions discussed, evaluated, and explained in regard to their proper understanding and application. Only a few of these will here be noted.

The author shows at length that invalidating laws are not at all necessarily penal in concept; confusion and error by interjecting unwarranteed penal notions into such enactments must be avoided because of the ensuing practical consequences in interpretation and application. The tract on the division or distinctions between invalidating laws aids considerably in clarifying their notion and function. As such it is a complement to chapter one. In the discourse on the power to enact invalidating laws, the relation between such laws and human liberty and natural law is examined. Man enjoys liberty under the limitations required by his life in society. Of particular interest here is the careful consideration of the authority of inferior ecclesiastical legislators to enact invalidating laws. The chapter on the interpretation of these laws discusses a number of subjects of value and importance. Among them is the discourse on the nullifying effect of prohibitory law under Roman jurisprudence, the difficulty which this rule produced and its solution in canon law. Also, special attention is paid to the necessity of considering upon what presumption the law is enacted, a presumption of fact or of law. For the purposes of applying rules of interpretation, the writer would prefer to conceive as a presumption of the legislator what the author calls a *presumption of law*. The two concepts appear considerably different in the sphere of interpretation and application of law. On the subject of interpretation, likewise worthy of particular mention is the treatment of epicheia. Chapter five, on the effect and obligation of invalidating laws, bears out the necessity of closely examining the terms of such enactments to ascertain their effect, the intent and extent of their obligation. This tract must be read very carefully in order to understand properly the trend of the discussions. Extensive listings of invalidating laws in the Code, identifying them as such according to their terminology, are found in chapter seven; penal laws are included. Particular attention is paid here, as elsewhere in the work, to the term *equivalenter* in canon 11. The listing of the invalidating clauses is introduced with appropriate observations. A special explanation is devoted to the frequently

occurring *nequit* (*nequeunt*) and *non potest* (*non possunt*) clauses. A great deal of material is here made available for profitable study. The subject matter of the last chapter is the implementation of invalidating law in respect to remedies in judicial procedure. As the author indicates, the observations on procedure are not a commentary on that field of the law. The merit of the tract lies in bringing procedural questions of nullity into juxtaposition with the principles on invalidating laws and their effects.

The documentation of the text appears as Reference Notes at the end of the treatise. It is not prolix, but very well chosen. Hence it furnishes to the reader a sense of security and assurance. It is adequate and responsive to the questions under discussion, taken from select primary and, with few exceptions, from secondary classical sources. The same is to be said for the bibliography. The index of topics is very carefully composed.

This work is of superior quality in the field of canonical jurisprudence and is most welcome.

J. Schmidt

Chronicle

GENERAL

On October 12-13, Archbishop Cushing was host to the National Canon Law Convention at Boston.

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The Redemptorist Church of Our Lady of Perpetual Help, Roxbury, Massachusetts, has been designated a minor basilcia by Pope Pius XII.

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The Franciscan Fathers of the Sacred Heart Province celebrated the 75th anniversary of their province on October 4. Archbishop Joseph Ritter presided at the solemn Mass of Thanksgiving.

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The First Red Mass in the Archdiocese of Dubuque was celebrated by Archbishop Binz at Loras College.

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On October 20, Cardinal Stritch dedicated Christ the King Chapel of Holy Cross Seminary at La Crosse, Wisconsin and officiated at the dedication of the seminary immediately before the Mass.

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The cloistered Carmelite Sisters of Allentown, Pa., opened the first cloistered monastery in the diocese of Fargo, N. Dakota. The new cloister is in Wahpeton, N. Dakota.

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Bishop Jerome Hannan was officially installed as the fifth bishop of Scranton by Archbishop O'Hara of Philadelphia.

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Archbishop Cicognani, Apostolic Delegate to the United States, blessed the new novitiate chapel of the Franciscan Fathers at Lafayette, New Jersey.

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A national Marian Convocation was held at The Catholic University of America on November 15-16. The four Cardinals of the United States and most of the hierarchy attended the closing ceremony, a Solemn Pontifical Mass celebrated on the evening of November 16. His Excellency, Archbishop Cicognani, Apostolic Delegate to the United States, preached on "The Queenship of Mary".

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The Chapel of the oldest seminary in the United States, St. Mary's, Baltimore, Maryland, was dedicated on November 23 by Cardinal Mooney.

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A new minor seminary, Our Lady Queen of the Angels, has been dedicated in Los Angeles by Cardinal McIntyre.

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Cardinal Bruno, Prefect of the Apostolic Signatura, died on November 10. He has been succeeded in this post by Cardinal Gaetano Cicognani as Pro-Prefect. Cardinal Cicognani also retains his post as Prefect of the Sacred Congregation of Rites.

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Thirty-two delegates of the Oblates of St. Francis de Sales attended a provincial chapter at Washington, D. C. The Very Reverend Thomas Lawless, Superintendent of schools for the diocese of Wilmington was elected First Consultor and Assistant Provincial.

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Religious, government, and civic officials attended the Pan American Mass celebrated by Archbishop O'Boyle in St. Patrick's Church, Washington, D. C.

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Reverend Michael Dineen of Milwaukee has been named executive secretary of the National Catholic Rural Life Conference.

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Monsignor Joseph C. Fenton has been elevated to the rank of Domestic Prelate by Pope Pius XII.

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Statutes of the fifth diocesan synod of Cincinnati, Ohio, will go into effect on January 1, 1955.

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All the houses of the Dominican Fathers in Texas and the new house in San Domingo have been erected into a vicariate of the Spanish Province with the Very Reverend Alvaro Rodriguez of San Diego, Texas, acting as Vicar Provincial.

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DIGNITIES

On October 12, Archbishop Molloy presided at the 50th anniversary of the profession of Brother Columba as a Franciscan.

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Reverend Mark Jullin, C.M., has been appointed national chaplain of the National Federation of Catholic College Students.

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Two new Auxiliary Bishops for the Archdiocese of Detroit were consecrated by Cardinal Mooney. They are Bishops John A. Donovan and Henry E. Donnelly.

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Bishop Robert Joyce was consecrated as Auxiliary Bishop of Burlington, Vermont.

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Bishop Charles Maloney was consecrated as Auxiliary Bishop for the Archdiocese of Louisville.

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Bishop Willinger, C.SS.R., of Monterey-Fresno, California, celebrated the 25th anniversary of his episcopal consecration on October 28.

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Cardinal Masella has been named Prefect of the Sacred Congregation of Sacraments by His Holiness Pope Pius XII.

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Archbishop Cushing celebrated the tenth anniversary of his elevation to the rank of Archbishop on November 8.

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Reverend Francis McSorley, O.M.I., son of the 1948 U. S. Catholic Mother of the Year, has been named Prefect Apostolic of the new Prefecture of Sulu, in the Philippine Islands.

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Bishop Martin O'Connor, Rector of the North American College in Rome, has been named a Consultor of the Sacred Congregation of Seminaries and Universities.

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Three priests of the diocese of Peoria, Illinois, have been named Domestic Prelates. They are: Reverend George Carton, Chancellor, and the Very Reverends L. P. Henkel and E. S. Dunn.

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Six members of the diocese of Joliet, Illinois, were recipients of papal honors. The following were named Domestic Prelates: the Very Reverend Emile Cousineau and the Reverends Emery Gotschall, Frederick Stenger, Philip Kennedy, and John Stoesser. The Reverend Vincent Cloos was named a Papal Chamberlain.

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Five priests from Great Falls, Montana, were named Domestic Prelates. They are: Cornelius Curtin, Mathew McHugh, Jolin Pettit, John Regan and Patrick Treacy.

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Reverend John Flynn, C.M., has been reappointed to the Advisory Council on Teacher Education of the New York State Council on Education.

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Monsignor George Higgins has been named director of the NCWC Department of Social Action to succeed the Reverend Raymond McGowan who retired because of ill health.

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Archbishop Karl J. Alter has been re-elected for the third successive year as Chairman of the NCWC Administrative Board.

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The Very Reverend Francis J. Connell, C.SS.R., Dean of Theology at The Catholic University of America was the recipient of the eighth annual Cardinal Spellman award for Theology.

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The solemn installation of Archbishop-Designate Giovanni Montini in the see of Milan has been announced for January 6.

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Monsignor Victor Primeau of Chicago was promoted to the rank of Protonotary Apostolic.

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Monsignor William McManus, assistant Director of the NCWC Department of Education, has been appointed by President Eisenhower to a committee for a White House Conference on Education.

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Nine members of the Archdiocese of San Francisco were elevated to the rank of Domestic Prelate. They are: Monsignors Walter Tappe, Leo Maher, Matthew Connolly, Thomas Byrne, Thomas Scahill, Leo Powleson, William Reilly, William O'Connor, and Nicholas Connolly.

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Cardinal Spellman, Military Vicar of the Armed Forces, spent his fourth successive Christmas with the American troops in Korea. While in Korea Cardinal Spellman received honorary citizenship of Korea.

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Bishop Aloysius J. Willinger, C.SS.R., who recently celebrated his 25th anniversary as a bishop, has been named as Assistant at the Papal Throne.

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Monsignor Bernard A. Cullen of New York has been named a Papal Chamberlain by Pope Pius XII.

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Bishop Edmond J. Fitzmaurice of Wilmington, Delaware, celebrated the 50th anniversary of his ordination to the priesthood.

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THE CANON LAW SOCIETY OF AMERICA

Annual National Meeting

On Tuesday and Wednesday, October 12-13, 1954, the Canon Law Society of America convened for its sixteenth annual meeting, held at the Hotel Somerset in Boston, Mass. The registration, which had begun at 1:00 P.M. in the hotel lobby, revealed an attendance of 137, representative of 39 dioceses and archdioceses, and of 24 religious communities.

Opening Meeting

The initial meeting was held at 3:00 P.M. in the Princess Ballroom, which served as the meeting place for all the sessions of the convention. The President of the Society, Msgr. Louis A. Wolf of Cleveland, presided. Upon opening the meeting with prayer, he introduced the Rev. Eugene A. Dooley, O.M.I., J.C.D., of Lowell, Mass., who presented a lengthy disquisition on "The Juridical Status of Parishes of Religious in the United States." The speaker furnished a detailed analysis of the various problems relating to the topic he discussed, and stressed in particular the present practice of the Holy See in the matter of either temporarily or perpetually entrusting parishes to the various religious institutes. An open floor discussion extended the session to 4:30 P.M., before there followed a short respite in anticipation of the business meeting.

Business Meeting

This meeting was called to order at 5:00 P.M. The President again presided. When he called for the reading of the minutes of the previous national meeting, held in Omaha, Nebraska, on November 11-12, 1953, the motion of Father Benjamin F. Farrell of Wheeling to dispense therewith was seconded by Father Alfred R. Julien of Boston, and the assembly accepted the minutes as presented to the President by Father Francis Korth, S.J., of St. Mary's College, Kansas, the previous Recording Secretary. The Recording Secretary, Msgr. George A. Carton, of Peoria, was authorized to record the minutes in the Permanent Book of Minutes.

There were presented for a prayerful remembrance by the Society's members the names of the following deceased members: Bishop William J. Hafey of Scranton, Pa., Bishop Joseph P. Lynch of Dallas, Texas, Msgr. James M. McDonough of Cleveland, Father Bartolo Fioriolli of Philadelphia, and Father James T. McBride, also of Philadelphia.

At the request of the Rev. William F. Cahill of Brooklyn, the chair announced that at St. John's College in Brooklyn a special course for the aid of civil attorneys was being offered on matrimonial legislation and church property laws from the Canon Law approach.

Next followed a report from Msgr. James P. Kelly of New York, Chairman of the Committee on Arrangements. The Committee had accepted the gracious invitation of the Most Rev. George Leech, Bishop of Harrisburg, for the holding of the next annual meeting at Hershey, Pa., on Tuesday and Wednesday, October 25-26, 1955. An invitation had also been extended by

the Most Rev. Bartholomew J. Eustace, Bishop of Camden, for a meeting of the national Society to be held in Atlantic City. Since this invitation followed after that which had been extended from the Bishop of Harrisburg, the Committee accepted it for the 1956 convention, which accordingly is to meet in Atlantic City.

The Nominating Committee, through Msgr. James P. Kelly, its chairman, presented for the election of the new officers of the Society the following names: For the office of president, Msgr. James A. Hughes of Newark, Msgr. John F. Gannon of Worcester, and Msgr. Herman P. Fedewa of Lansing; for the office of vice-president, Rev. John S. Quinn of Chicago, Rev. Martin N. Lohmuller of Harrisburg, and Rev. Joseph I. Johnson of Springfield, Mass.; for the office of recording secretary, Rev. Charles Duerr of Green Bay, Rev. John F. Podestra of Joliet, and Rev. Fred J. Mosman of Dallas, Texas.

With reference to the office of general secretary-treasurer, the chair reminded the members that Father Clement Bastnagel had for years served in that capacity, and that the Committee had abstained from making additional nominations for that office. This action of the Committee was approved through an acclamation for his re-election. The chair further reported that during the past summer, in a meeting held by the Executive Committee in Boston on June 16th, the President was authorized to decree that a sum of $100.00 should be set aside each month for the work executed in the office of the General Secretary-Treasurer. This decree was put into effect as of July, 1954. The assembly acknowledged its general approval.

The Treasurer was then called on for his financial report of the past fiscal year (Oct. 1, 1953, to Sept. 30, 1954). Lithoprinted copies of the report had been given to all in attendance at the business session. A word of explanation was offered on several points for a more complete understanding and appreciation of what was implied by the various figures in the report. During the year a gain of $1,510.07 over expenses had been achieved. In view of this gain the Treasurer moved that once more, as in previous years, a sum of $500.00 be earmarked for the purchase of books and documents for the Canon Law Library at the Catholic University of America. The seconded motion carried unanimously.

As Chairman of the Committee on Membership, Father Bastnagel then reported that the present total membership of the Society comprised 644 members. Of this number, 167 were members whose active status had not been brought up to date in view of the non-payment of dues for the current fiscal year. The over-all number included also 89 members of the hierarchy who had, like active members, subscribed for Canon Law dissertations through the Society. The Society's Constitution regards all members of the hierarchy in the United States and Possessions as honorary members of the Society who enjoy the privileges that accrue to active membership in the Society. The report on membership as submitted by Father Bastnagel was accepted by unanimous vote, and the Recording Secretary was instructed to file it with the other official documents and reports.

The chair extended a word of welcome to the Most Rev. Eric F. MacKenzie and the Most Rev. James H. Griffiths, both charter members of the

Society, who were in attendance. The chair also read a letter of congratulation which the Society's President had sent to the Most Rev. Jerome D. Hannan on his appointment as Bishop of the Diocese of Scranton. A special word of thanks was offered to Bishop Hannan in view of his outstanding editorship of *The Jurist,* which publication had from the beginning lent its wholehearted support to the interests of the Society.

Next, Monsignor Walter Furlong of Boston, Chairman of the Local Committee on Arrangements for the convention, was introduced. The chair pointed out that, in view of the excellent provision for and handling of all the details attendant on the convention, the separating of the office of the President of the Society from the position of Local Chairman for the convention had manifestly proved a beneficial move. Msgr. Wolf likewise explained that the advancing of the registration fee to $20.00 was the result of action taken, not by the local committee, but by the President upon consulation with and support from the members of the Executive Committee. The advance contemplated making the convention a self-supporting affair, so that even smaller dioceses could feel in a position to play host to the convention in the future.

Msgr. Furlong spoke shortly with reference to the various materials that had been given to the registrants at the convention. He particularly reflected his gratitude to the Atlantic Refining Company for furnishing city maps for all the members in attendance at the convention. Arrangements called for the celebration of a Pontifical Mass at St. Clement's Eucharistic Shrine the following morning at 9:15 o'clock. At this shrine, at neighboring churches, and also at the hotel, arrangements were completed for the convenience of the members of the Society who wished to celebrate private Mass. The Pontifical Mass was to be held in honor of St. Pius X, who more than anyone else had contributed so largely to the enactment of an up-to-date codification of the Church's universal law.

At this point in the business session the President read a note from Msgr. Edward G. Roelker, Dean of the School of Canon Law at the Catholic University of America, who expressed his desire that the Society's members should know of the deep and genuine appreciation of the School of Canon Law for the $500.00 which the Society had during the past year made available for the purchase of documents, books and materials for the Canon Law Library at the University. More than one hundred items had been purchased with the available funds between October 1, 1953, and October 1, 1954.

The assembly was ready to proceed to the election of officers for the coming year. No additional nominations were made from the floor. Fathers Luke Farley and Francis Sexton were appointed as tellers for the distributing, collecting and counting of the ballots. The results of the balloting were to be announced at a later meeting. Special efforts would be made for a closer harmonization between the membership rolls as held by the national Canon Law Society and the various regional conferences or branches of the Society.

When the ballots had been collected the chair entertained the submitting of any further reports and the handling of any additional business matters. In the absence of any further activity in these matters the chair suggested

that an adjournment was in order. The adjournment that followed paved the way for the "good fellowship" hour that preceded the dinner.

Dinner Meeting

The dinner was served at 7:15 o'clock. Guests of honor were His Excellency, the Most Rev. Richard J. Cushing, Archbishop of Boston, the Most Rev. Eric F. MacKenzie, Auxiliary Bishop of Boston, the Most Rev. John F. Hackett, Auxiliary Bishop of Hartford, and the Most Rev. James H. Griffiths, Auxiliary Bishop of New York and Chancellor of the Military Ordinariate. After the dinner, Archbishop Cushing extended a warm welcome to the Society, and spoke inspiringly about the far-reaching projects which the Society can promote and serve.

Evening Session

At 9:15 o'clock Msgr. Wolf called the meeting to order. He announced the results of the election of the Society's officers. Elected as President was the Rt. Rev. John F. Gannon of Worcester; as Vice-President, the Rev. Martin N. Lohmuller of Harrisburg; as Recording Secretary, the Rev. Fred J. Mosman of Dallas.

Msgr. Wolf introduced the Rev. Alfred R. Julien, outgoing Vice-President of the Society, as presiding over the discussion meeting. The Rt. Rev. Timothy P. O'Connell of Worcester read a series of responses sent to the Diocese of Worcester by the Sacred Oriental Congregation with reference to a transfer from one rite to another at the time of conversion on the part of a convert from a sect within the Dissident Oriental Church. It appeared that permission was to be sought from Rome if such a convert wanted to join the Latin rite, except perhaps when he converts from the Russian Orthodox Church.

Father Julien next introduced Chor-Bishop Louis Khalil of Brockton, Mass., who dealt with responses received on the question of the juridical form requisite for the contracting of marriage on the part of Maronites among themselves or with Catholics of some other rite. He hinted that a considerable amount of confusion seemed current both in practice and in doctrine. He urged a most careful study not only of the Motu proprio *Crebrae allatae*, but also of replies and responses that have been issued since 1949. The meeting was punctuated with an extended discussion from the floor. Adjournment followed at 11 o'clock.

Solemn Pontifical Mass

This Mass, in honor of St. Pius X, was celebrated by His Excellency, Archbishop Cushing. The choir of St. John's Archdiocesan Seminary furnished the chant and the music. In his sermon the Archbishop dealt with the notion "*plenitudo legis dilectio*." There was need of being on guard against such human tendencies which might bar the law from achieving its fulfillment in divine charity, just as there was need of supporting the demands inherent in a law against vain and unwarranted relaxations of it. It was indispensable for all lawyers to be ever mindful of the inescapable difficulties experienced by those who must submit to the restraints which the law imposes upon them.

Final Session

The final lecture was presented by the Rev. Joseph I. Johnson of Springfield, Mass. In his paper the speaker offered a closely articulated discussion regarding the prenuptial investigation of free status in preparation for marriage. The Instruction of the Sacred Congregation of the Sacraments, issued on June 29, 1941, was made the basis for a detailed commentary. The speaker suggested the possibility of standardizing the forms used in the various dioceses, or at least the procedure of the various chanceries, with reference to the implementation of the Instruction's provisions and directives.

The open discussion after the lecture adverted to divers factors and items which demanded a very special consideration in connection with any effort to draw up a standardized questionnaire. Uniformly arranged interrogatories could definitely serve a most useful purpose. It was ultimately decided that the Committee on Research should give further study to the matter and furnish a report at the next annual meeting.

Before this session of the sixteenth annual meeting of the Society came to a close, Monsignor Wolf, the past year's president, bespoke the Society's thanks for the Archbishop's welcome and hospitality. He again voiced his gratitude to Bishop MacKenzie, to Msgr. Furlong, and to Fathers Farley and Sexton, for their untiring efforts in setting the stage for such an efficient program and delightful convention. With a rising vote of thanks the assembly closed its meeting at 12:30 P.M.

Final Luncheon

An informal luncheon at 1:00 P.M. brought the convention's activities to a close. The newly elected President, Msgr. John F. Gannon, acknowledged the honor which the Society had paid him in their selection of him as their President. He thereupon indicated the appointments to the various committees of the Society for the ensuing year.

COMMITTEE ON RESEARCH AND DISCUSSION

Chairman— Very Rev. Joseph I. Johnson (Springfield, Mass.)
Very Rev. Benjamin F. Farrell (Wheeling)
Rev. John S. Quinn (Chicago)

COMMITTEE ON MEMBERSHIP

Chairman— Rev. Clement Bastnagel (Catholic University)
Rt. Rev. Timothy P. O'Connell (Worcester)
Very Rev. Msgr. Thomas A. Donnellan (New York)

COMMITTEE ON ARRANGEMENTS

Chairman— Rt. Rev. James P. Kelly (New York)
holding out a term of one year
Rt. Rev. Edward M. Burke (Chicago)
serving out a term of two years
Rt. Rev. Walter P. Furlong (Boston)
entering upon a term of three years

COMMITTEE FOR THE PROMOTING OF REGIONAL CONFERENCES

Chairman— Rev. Alfred R. Julien (Boston)
Very Rev. Msgr. Joseph Vath (New Orleans)
Rev. Francis N. Korth, S.J. (St. Mary's College, Kansas)

EXECUTIVE COMMITTEE

Chairman— The President
Rt. Rev. John F. Gannon (Worcester)

Members ex officio—The Vice-President
Rev. Martin N. Lohmuller (Harrisburg)
The Recording Secretary
Rev. Fred J. Mosman (Dallas)
The General Secretary-Treasurer
Rev. Clement Bastnagel (Catholic University)

Consultors— Rt. Rev. John M. Costello (New York)
serving a term of one year
Very Rev. Benjamin F. Farrell (Wheeling)
serving a term of one year
Rt. Rev. Louis A. Wolf (Cleveland)
serving a term of two years
Rt. Rev. Herman P. Fedewa (Lansing)
serving a term of two years

THE HARRISBURG LOCAL ARRANGEMENTS COMMITTEE

Chairman— Rev. Martin N. Lohmuller
Rev. Matthias Siedlicki
Rev. John Metz
Rev. Damian McGovern

Upon the announcement of these appointments the Sixteenth Annual Meeting of the Canon Law Society of America was formally adjourned with prayer.

THE RICCOBONO SEMINAR OF ROMAN LAW IN AMERICA

The regular meeting of the Roccobono Seminar of Roman Law in America was held on December 17 in the Canon Law Library of The Catholic University of America. Dr. Edgar Bodenheimer, Professor of Jurisprudence at the University of Utah, delivered an inspiring paper entitled: "Public Policy Exception in Private International Law."

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